

CORNELL
UNIVERSITY
LIBRARY

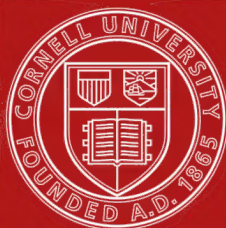


Cornell University Library
JK3429.C7 S91

The Council of Revision of the state of



3 1924 032 658 233
olin



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

THE
COUNCIL OF REVISION

OF THE
STATE OF NEW YORK;

ITS
HISTORY, A HISTORY OF THE COURTS WITH WHICH ITS MEM-
BERS WERE CONNECTED; BIOGRAPHICAL
SKETCHES OF ITS MEMBERS;

AND ITS
VETOES.

BY ALFRED B. STREET.

ALBANY:
WILLIAM GOULD, PUBLISHER.
1859.

Entered according to act of Congress, in the year MDCCCLIX, in the Clerk's Office of the District Court of the United States for the Northern District of New York, by ALFRED B. STREET.

WEED, PARSONS & CO., Stereotypers and Printers,
Albany.

CONTENTS.

- I. HISTORY OF THE COUNCIL AND THE COURTS.
- II. BIOGRAPHICAL SKETCHES OF THE MEMBERS.
- III. VETOES OF THE COUNCIL.
- IV. APPENDIX. (OBJECTIONS NOT SANCTIONED BY THE COUNCIL.)
- V. APPENDIX A. REPORTS OF THE SELECT COMMITTEE OF THE ASSEMBLY,
(MICHAEL ULSHOEFFER, CHAIRMAN), ON THE SUBJECT OF THE CONVENTION
(OF 1821), AND THE SUBSEQUENT PROCEEDINGS.
- VI. CHRONOLOGICAL LIST OF BILLS VETOED BY THE COUNCIL.
- VII. CHRONOLOGICAL LIST OF BILLS IN THE APPENDIX.
- VIII. CHRONOLOGICAL LIST OF BILLS THAT DID NOT BECOME LAWS FROM THE VETOES
OF THE COUNCIL.
- IX. CHRONOLOGICAL LIST OF BILLS THAT BECAME LAWS NOTWITHSTANDING THE
OBJECTIONS OF THE COUNCIL.
- X. ALPHABETICAL INDEX OF BILLS VETOED BY THE COUNCIL.
- XI. ALPHABETICAL INDEX OF BILLS IN THE APPENDIX.

HISTORY

OF THE

COUNCIL OF REVISION; THE COURT FOR THE TRIAL OF IM-
PEACHMENTS AND CORRECTION OF ERRORS; THE
SUPREME COURT, AND THE COURT OF
ADMIRALTY.

THE COUNCIL OF REVISION was created by the third section of the Constitution of 1777. The section was introduced on the 1st of April of that year, by Robert R. Livingston (afterward Chancellor of the State), in the Convention of Representatives of the State of New York,¹ and the original draft is in his handwriting.²

After stating that "laws inconsistent with the spirit of this Constitution or with the public good may be hastily and unadvisedly passed;" it ordains "that the Governor for the time being, the Chancellor and Judges of the Supreme Court, or any two of them, together with the Governor, shall be and hereby are constituted a Council to revise all bills about to be passed into laws by the Legislature, and for that purpose shall assemble themselves from time to time, when the Legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretense whatever. And that all bills which have passed the Senate and Assembly shall, before they become laws,

¹ Journal Provincial Convention, N. Y., vol. 1, p. 860.

² Miscellaneous Papers (MSS.), 37, p. 540, in the Secretary of State's office, N. Y.

be presented to the said Council for their revisal and consideration; and if, upon such revision and consideration, it should appear improper to the Council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto in writing, to the Senate or House of Assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the Council, at large in their minutes, and proceed to reconsider the said bill.

“But if, after such reconsideration, two-thirds of the said Senate or House of Assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and, if approved by two-thirds of the members present, shall be a law.”

To prevent any unnecessary delays, it was ordained that if any bill should not be returned by the Council, within ten days after it should have been presented, the same should be a law, unless the Legislature should, by their adjournment, render a return of the bill within ten days impracticable; in which case the bill should be returned on the first day of the meeting of the Legislature, after the expiration of the said ten days.

It was also provided by the act entitled “An act further to organize the Government of this State,” passed the 16th of March, 1778, “that whenever and as often as a bill shall have been revised by the Council, and they shall have thereon declared that it did not appear to them improper that the said bill should become a law of this State; or if the said bill shall have been before the said Council, by the space of ten days, and shall not have been returned by the said Council, with their objections thereto, as by the Constitution of this State is required; whereby the same shall have become a law of this State, a certificate thereof, as the case may be, to be subscribed by the person administering the government of this State for the time being, shall be indorsed on such law. Whereupon the said person administering the government, shall, with his own proper hand, deliver such law to the Secretary of the State for the time being, or his sworn Deputy; who shall cause the same to be deposited in the Secretary's office, and recorded in a book or books, to be kept for that purpose.

"And that whenever, and as often as a bill returned by the said Council to be reconsidered, shall, notwithstanding, be passed into a law, the President of the Senate, or Speaker of the Assembly, in whichsoever the same shall, upon such reconsideration, last pass, shall deliver such law, with his own proper hand, to the Secretary of the State for the time being, or his sworn Deputy, to be deposited and recorded as aforesaid; and the said Secretary or his said Deputy shall attend at every session of the Legislature, for the purpose of receiving laws to be delivered to him as aforesaid."

The Council had a Clerk, and sat with closed doors. At first the Senate by one, and the Assembly by two of their members, sent to the Council the bills passed by them, and the Council directed the Chancellor, Chief Justice or one of the Justices, to deliver a copy of the resolution, signed by the Governor, that it did not appear improper that the bills submitted to them should become laws, to either the Senate or Assembly. If the Council objected to any of the bills, a copy of the objections, signed by the Governor, with the bill, was also delivered as above to the branch of the Legislature which last passed it.

In 1785, the Assembly reduced their number to one, but in 1788 restored it to two, the Senate then raising theirs also to two, which continued till 1808, when the Clerk of the Council, and the Clerks of the two Houses were directed to deliver the messages.

During the existence of the Council, they returned one hundred and sixty-nine bills with their objections to the Legislature. Fifty-one of the bills, so returned, were passed into laws by the Legislature by a two-third vote; the remainder (one hundred and eighteen) failed, in consequence of the objections, to become laws.

Objections to thirty-one bills, in addition, were submitted to the Council, by the members thereof, in whose charge they were placed, but were not sanctioned by a majority of the Council, and consequently not communicated to the Legislature.

The Council, after an existence of about forty-four years, was abolished by the Convention of 1821, and its power lodged solely in the hands of the Governor by the Constitution of that year.

THE COURT FOR THE TRIAL OF IMPEACHMENTS AND THE CORRECTION OF ERRORS, being the court of last resort in the State, was created also by the Constitution of 1777.

A court of final resort was known in the earliest Dutch period of the Colony of New York. From the decrees of the Council of Peter Minuet, Governor of the Colony in 1626 (which Council was invested with judicial as well as legislative and executive powers), lay an appeal to the Amsterdam Chamber of the West India Company. A right of appeal was also reserved in the charter granted by the above Company to the Patroons of the Colony, from their courts, where judgment was rendered for a sum exceeding fifty guilders, to the Director-General and Council of New Amsterdam. This right, however, was rendered nugatory by the Patroons exacting from the tenants, as a preliminary condition to their entering the manor, that they should not appeal from the decisions rendered in the courts of the former. A right of appeal also lay from the decisions of William Kieft, Colonial Governor in 1638, and his Council, to the Amsterdam Chamber, although that right was also defeated by the imposition of fine and imprisonment on the person who attempted it.

From the Court of the "Schout, Burgomasters and Schepens," granted by the Amsterdam Chamber to the colonists during the governorship of Peter Stuyvesant, lay an appeal to the Supreme Court (composed of the Governor and Council) of the Province, at New Amsterdam.

The Court of Assize, established under the Code (framed by direction of the Duke of York, and known as the "Duke's Laws") in 1665, when Richard Nicholls was Governor, possessed an appellate jurisdiction over all inferior courts.

The Court of Oyer and Terminer, created by the act of the General Assembly, under the administration of Governor Dongan, passed on the 29th of October, 1683, entitled "An act to settle courts of justice," held a general appellate jurisdiction over the other courts of the Colony, subject to an appeal to the King. From the judgments and decrees of the Court of Chancery (held by the Governor and Council), also erected by the act, lay an appeal likewise to the King.

The act of 1691, under Sloughter's administration, established appeals in the following manner: From the Court of Mayor and Aldermen, and Courts of Common Pleas to the Supreme Court, for any judgment above the value of twenty pounds; and from the

Supreme Court at New York to the Court of Appeals, consisting of the Governor and Council, for any judgment above the value of one hundred pounds; and from the latter jurisdiction to their Majesties (William and Mary) in Council for any decree or judgment above the value of three hundred pounds. Provided the party or parties, so appealing, first paid all the costs of the judgment or decree from which the appeal arose, and entered into recognizance, with two sufficient sureties for double the debt or matter recorded against him or them, to the court from which they appealed, that he or they would prosecute the said appeal with effect, and make return thereof within twelve months after the said appeal was made. If default should happen thereon, then execution to issue upon the judgment against the party or the sureties of course without *scire facias*.

In Chief Justice Smith's letter to Bellamont, in November, 1700, he states that the above recognizance was to the court to which parties appealed, "that they would prosecute the said appeal with effect, and make return thereof; if from the Supreme Court to the Governor and Council, in six months; if from the Governor and Council to his Majesty in Council, within twelve months after the said appeal or appeals so made."¹

In 1753 the amount determining the right of appeal from the Supreme Court to the Governor and Council was altered from one hundred to three hundred pounds, and from the latter tribunal to the King and Privy Council from three hundred to five hundred pounds.

The thirty-second section of the Constitution of 1777, declared that a court should be instituted for the trial of impeachments and the correction of errors under the regulations which should be established by the Legislature, and to consist of the President of the Senate, for the time being, and the Senators, Chancellor and Judges of the Supreme Court, or the major part of them. If the Chancellor or Judges should be impeached, they should be suspended from exercising their offices until acquitted; and when an appeal from a decree in equity on a question of law brought up by writ of error on a judgment of the Supreme Court should

¹ 4 Col. Doc., 828.

be heard, the Chancellor or Judges should inform the court of the reasons for the decree or judgment, but have no voice in the final matter.

The power of impeachment of all officers of State was vested in the House of Assembly, the requisite for finding of which impeachment was by a vote of two-thirds of the members present; and no judgment of the court was valid unless assented to by two-thirds of the members thereof present, the members having, previous to the trial, been sworn truly and impartially to try and determine the charge according to evidence. The judgment extended only to removal from office and disqualification to hold any place of honor, trust or profit under the State; although the convicted party was subject to indictment, trial and punishment under the general laws. The impeached or indicted party was allowed counsel on the trial, as in civil cases.

The act passed on the 23d of November, 1784, instituting the above court in pursuance of the Constitution, gave directions for the sittings of the court, for a seal and a clerk, and the manner of proceeding upon impeachment; directed that all errors in the Court of Chancery, Supreme Court, Court of Probate and Admiralty, except in cases of captures, should be corrected in this court; also directed the proceedings in the writ of error, on a judgment of the Supreme Court, or an appeal from a decree of the Court of Chancery, or from an order or sentence of a Court of Probate or Admiralty; and farther, that all appeals from decretal orders of Chancery, or from a sentence, judgment, decree or order of the Court of Admiralty or Probate, should be made within fifteen days next after such sentence, judgment, decree or order; and all writs of errors upon judgments in the Supreme Court, or appeals from final decrees in Chancery, should be brought within five years next after rendering the judgment or making the decree. The act also directed that the President of the Senate should have a casting vote in case of an equal division of opinion among the other members of the court, but have no other vote; also, that writs of error in civil cases, and criminal cases not capital, were writs of right and should issue of course, but in capital cases were writs of grace. In all cases the writs to be issued by the Chancellor; but in those capital, only on order upon

motion or petition, with notice to the Attorney-General or State prosecutor.

The Constitution of 1821 reaffirmed the powers of the court without change, except that a majority of the members of Assembly present should concur in an impeachment, instead of two-thirds.

After an existence of nearly seventy years, the court was abolished by the Constitution of 1846. Its powers in cases of impeachment were transferred to a court composed of the President of the Senate, the Senators, or a major part of them, and the Judges of the Court of Appeals, or a major part of them, and its jurisdiction as an appellate court to the Court of Appeals.

The present Court for the Trial of Impeachments is a court of record, having a seal. When summoned, it is directed to be held at the capitol, in Albany, and the clerk and officers of the Senate to be the clerk and officers of the court. The President of the Senate to be the presiding officer, and in his absence, the Chief Judge of the Court of Appeals, and in the absence of the two, such other member as the court shall elect.

The Court of Appeals is composed of eight judges, four elected by the State at large for eight years, and four selected from the class of Justices of the Supreme Court having the shortest time to serve.

The Judge of the Court of Appeals, elected by the State at large, having (under the classification adopted in section four of article two of the act in relation to the judiciary, passed May 12th, 1847) the shortest time to serve, is constituted the Chief Judge of the said court.

There is also a clerk of the Court of Appeals (ex-officio clerk of the Supreme Court), elected by the State at large, to hold his office for three years, giving bond to the State in the penalty of \$25,000, with two sufficient sureties, for the faithful performance of his duties, which bond is filed with the Comptroller. He is directed to keep his office at the seat of government; to appoint a deputy by writing under his hand and seal, who is to take the oath of office, and act as clerk in case of vacancy in the office, or when the said clerk is absent or incapable of performing his duties.

Four terms, viz., on the first Tuesday of January, the fourth Tuesday of March, the third Tuesday of June, and last Tuesday of September, are held every year at the Capitol in the city of Albany, to continue as long as the court shall deem necessary.

Six judges constitute a quorum, and the concurrence of five is necessary to pronounce a judgment. The case must be reheard if five do not concur, but no more than two rehearings shall be had, and if, on the second rehearing, five judges do not concur, the judgment is affirmed.

There is a reporter appointed by the Governor, Lieutenant-Governor and Attorney-General, called the State Reporter, holding his office for three years, but removable by the concurrent vote of the Legislature.

The Legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction established in a city, to be removed for review directly into the Court of Appeals.

CHANCERY JURISDICTION is first traced in our Colonial annals to the courts organized under the "Duke's Laws." The courts in the various towns heard matters in equity for a sum not exceeding five pounds, but in the Courts of Sessions in the three (east, west and north) ridings, there was no limitation, while the Court of Assize (the highest tribunal) had equitable cognizance where the amount exceeded twenty pounds. The mode of proceeding was by bill and answer. Witnesses were examined in the same manner as in the English Court of Chancery, and all matters were determined without a jury.

From this period (1665) the above judicial organization continued (with the exception of an interruption from August, 1673, to October, 1674. during which time the Dutch again possessed the Province under Colve) until 1683, when the General Assembly, convened by Governor Dongan, erected, under the act to "settle courts of justice," among other tribunals a separate Court of Chancery for the province at large.¹ This court was held by the Governor and Council. The former had authority to choose a Chancellor in his stead, and be assisted by such other persons as he should see fit, together with necessary clerks and other officers. The court had cognizance of all equitable matters, and was moreover the highest Colonial tribunal.

¹ The Court of Chancery in England is of great antiquity. It is traced to the reign of Alfred, (872-901), and was not then a court instituted, but affirmed to be then existing. 4 *Coke's Institutes*, p. 78.

On the sixteenth of February, in the above year, the first Court of Chancery was held by the Governor and Council, the terms thereafter being on the first Thursday of every other month during the year.

In the act of 1691, passed by the General Assembly convened by Governor Sloughter in the commencement of that year, was a provision for a Court of Chancery, the same as in the act "to settle courts of justice."

The act of 1691 was limited to two years, but the judicial organization under it was (with some changes) continued by three other acts till April, 1698, when the organization ceased with the expiration of the last act. But although the other courts were revived by an ordinance of Governor Bellamont and Council in 1699, there was no organization of the Court of Chancery until 1701, when Lieutenant-Governor Nanfan, under an order from the Lords of Trade, established a court by an ordinance issued on the second of April of that year, to be held by the Governor and Council, or any two of the board, on the first Thursday of every month. He also appointed masters, clerks and a register.¹ The court was opened on the first Thursday in September of said year.²

The General Assembly, questioning the right of the crown to establish an equity court in the colony, commenced an opposition against it. An opposition to the court had long existed among the people, and continued for years after this act of the Assembly, if it ever entirely ceased. Public complaint was made from time to time, not only as to the erection of the court, but the exorbitance of the fees and the unjustness of the decrees.

This opposition was not against a Court of Chancery as such. On the contrary, a court of that character was considered necessary, as is shown by the address of the General Assembly in 1737, when George Clarke was Governor; and by the declaration of the historian, Smith, that "a Court of Equity is absolutely necessary, but whether private property ought to be in the hands of the Governors I leave others to determine."³

¹ Smith's History, N. Y. (Carey's ed.), p. 113.

² Letter of Attorney-General Sampson Shelton Broughton to the Lords of Trade. *Lond. Doc.*, 914; *Col. Doc.*, vol. 4.

³ Smith, pp. 274, 276.

The opposition was directed against the erection of the court by ordinance of the Crown and the Governors acting as Chancellors, the inhabitants being of opinion that the creation of the court should be by act of the General Assembly of the Province.

In June, 1702, by an ordinance of the Governor (Lord Cornbury), in Council, the Court of Chancery was suspended until the Chief Justice and Second Justice of the Supreme Court reported "such method as would render the said court most useful and least burthensome to the subject," and also a just and reasonable table of fees.¹ In February, 1703, these officers made their report, and laid before the Governor a table of fees "by them made and moderated." Consequently Lord Cornbury, by an ordinance in November following, revived and established the said court according to the method of the High Court of Chancery in England.

Such was the feeling against the suspended tribunal, that in November after the ordinance of June, 1702, a bill passed the General Assembly "to declare the illegality, and frustrate the irregular proceedings, extortions and decrees of the late pretended Court of Chancery."²

In the Assembly which met in August, 1708, the Committee of Grievances reported, among other resolutions (leveled against the administration of Lord Cornbury, who continued as Governor until the arrival of Lord Lovelace in December following), one declaring "that the erecting a court of equity without consent in General Assembly is contrary to law, without precedent, and of dangerous consequence to the liberty and properties of the subjects."³

In 1711, Governor Hunter (who had arrived the year before, as the successor of Lord Lovelace) began to exercise the office of Chancellor, having, in October of that year, appointed two masters, a register, an examiner and two clerks, and proclaimed the sitting of the court to be on Thursday of every week.⁴

The Assembly upon this reiterated the resolution of 1708, and remonstrated to the Lords of Trade, who, however, in a letter

¹ 2d Vol. Revised Laws 1813, Appendix.

² Journal General Assembly, New York, vol. 1, p. 157.

³ The same, vol. 1, p. 224.

⁴ Smith, p. 148. (Carey's ed.)

to the Governor, approved his conduct, blamed the Assembly, and declared the right of the Crown to the erection of an equity court.

The court was continued for sixteen years subsequently without interruption, although the colonists manifested, throughout that period, their hostility to it.

In November, 1727, a report was made by the Committee of Grievances in the General Assembly, reflecting severely upon the court, its arbitrary and tyrannical conduct; that its extraordinary proceedings and extortionate fees were the greatest grievance and oppression the Colony had ever felt. The dissolution of the Assembly by Governor Burnett alone prevented that body from passing an act declaring null and void all the court's proceedings.

An ordinance, however, was made in the following spring, remedying the abuses in the practice of the court and reducing very materially the fees.

Governor Montgomery, who succeeded Burnett in 1728, assumed the duties of Chancellor with great reluctance.¹

The opposition to this tribunal still existed in the General Assembly and among the people.

Sir Joseph Eyles and others filed a bill in the Court of Chancery to vacate the Equivalent land² or Oblong Patent, granted to Hauley and Company by Governor Montgomery, the complainants claiming under a prior patent, granted May 15, 1731, in London. The defendants, proprietors of the lands (50,000 acres), by Messrs. Alexander and Smith, who were also interested in the Hauley Patent, excepted to the jurisdiction of the Governor as Chancellor; the exception was overruled, and the defendants (about fifty in number), in October, 1735, petitioned the General Assembly, stating they conceived the filing the bill, as aforesaid, unwarrantable, of dangerous consequence to them and to the liberties and properties of the people, and prayed the house to protect them and the said people. The excitement against the court was stimulated by Alexander and Smith. Petitions were also

¹ See the admirable "Historical Sketch of the Judicial Organization of New York," by Charles P. Daly.

² So called because ceded by Connecticut in consideration of a like quantity of land yielded to that colony by New York, upon the settlement of their respective boundaries in 1731. *Record Commissions*, vol. 4.

presented to the Assembly by the inhabitants, requesting the dissolution of that body, urging frequent elections as a great privilege, which petitions were seconded by the unanimous order of the Assembly, and delivered to Governor Cosby.

The latter, however, refused to dissolve the Assembly, and it, in November of the above year, on the report of the Committee of Grievances, that they had considered the petition of the defendants in the matter of the Oblong Patent, and by their recommendation, resolved "that the Court of Chancery in the hands or under the exercise of a Governor, without consent of the General Assembly, is contrary to law, unwarrantable, and of dangerous consequence to the liberties and properties of the people."¹

In September, 1737, on the occasion of a bill being introduced for the frequent elections and meetings of the General Assembly, an address was presented by that body to Governor Clarke, in which they reiterated their complaint of a Court of Chancery being erected by ordinances of the Governors, and their conviction it should be by act of the General Assembly; and also of the inefficiency of many of the Governors holding said court.²

From this time, the Assembly ceased their attacks upon the Court, and it was held regularly until the Revolution.

From the commencement of a Court of Chancery in the Province, no Chancellor was appointed. The Governors acted as such, sometimes assisted by the Chief Justice and Justices of the Supreme Court, generally members of the Council, or by one or more of these Judges, together with the legal members of the Council.

Generally, however, the Governors acted as sole Chancellors, and those who succeeded Sir Charles Hardy (who arrived in 1753, and who associated the Supreme Court Bench with him in his equity duties) entirely so, down to the end of the Colonial period.

At the breaking out of hostilities in the spring of 1775, a Provincial Congress for the Colony of New York assembled, composed of delegates from the various counties. A second, third and fourth Congress were held. The latter, which convened July 9th, 1776, changed its name the next day (on the receipt of the Declaration of Independence of the fourth of that month, passed by

¹ Journal General Assembly, vol. 1, p. 687.

² Journal General Assembly, vol. 1, p. 707.

the Continental Congress), to "Convention of Representatives of the State of New York." On the 20th of April, 1777, the Convention adopted the first Constitution of the State. In this Constitution mention is made of the Court of Chancery as an existing court.

On the eighth of May following, the Convention adopted a plan for organizing a temporary form of government until the Constitution could be carried into effect by the election and appointment of the officers provided in that instrument. As many of the officers were immediately necessary for the execution of the laws and for holding the elections, they were appointed in the above plan. Thus Robert R. Livingston (having been elected by the Convention, on the third day previous to the eighth, to the office) was appointed the first Chancellor of the State. On the seventeenth of October succeeding, he was commissioned as such by the Council of Appointment, the elections under the Constitution having taken place during the summer, and the Legislature having assembled on the ninth of September at Kingston.

On the 22d of June, 1783, Chancellor Livingston was reappointed, from doubts whether, by his acceptance of the Secretaryship of Foreign Affairs in 1781, he had not vacated his Chancellorship.

On the 28th of October, 1801, Mr. Livingston, having resigned his office on being appointed Minister to France, was succeeded by John Lansing, Jr., who was succeeded in turn on the 25th of February, 1814, by James Kent.

In 1814 (April 13th), the Reporter of the Supreme Court was also made Reporter of the Court of Chancery.

The Constitution of 1821 provided that equity powers should be vested in the Circuit Judges created by that instrument, subject to the appellate jurisdiction of the Chancellor. In accordance with this provision, an act was passed on the 17th April, 1823, conferring on the Circuit Judges (eight in number) concurrent jurisdiction with the Chancellor of all matters and causes in equity, subject to the latter's appellate jurisdiction; authorized each Judge to appoint a clerk for the Court of Equity to be held by him, which clerk should also perform all the duty of register of said court; and provided that the Judges should devise a seal for the clerks in all equity proceedings.¹

¹ Sections 10, 11, 12 of chapter 182, Laws 1823.

These courts were however subsequently abolished; the Chancellor was invested with general equity jurisdiction, and the Circuit Judges acted as Vice-Chancellors in their respective circuits.

The Constitution also ordained that the Chancellor should hold his office during good behavior, or until he should attain the age of sixty years.

It further provided that the masters and examiners in Chancery should be appointed by the Governor and Senate for three years, unless sooner removed, and the registers and assistant registers should be appointed by the Chancellor during pleasure. Heretofore the former had been appointed by the Council of Appointment.

In 1752 (Governor Hardy, Chancellor) the officers of the court consisted of two masters, two clerks, one examiner, a register and a sergeant-at-arms, all without salary.¹

In 1823 there were five hundred and ten masters and twenty-five examiners; in 1846 there were one hundred and eighty-eight masters and one hundred and sixty-eight examiners.

On the 1st of August, 1823, Nathan Sanford succeeded James Kent as Chancellor; on the 19th of January, 1826, Samuel Jones succeeded Sanford; and on the 22d of April, 1828, Jones was succeeded by Reuben H. Walworth, who continued as Chancellor till the abolishment of the office in 1847.

In January, 1831, a separate Vice-Chancellorship for the first circuit was established by act, in the city of New York, the officer to be appointed by the Governor and Senate, and hold during good behavior, or till the age of sixty. On the 16th of March, following, W. T. McCoun was appointed. On the 27th of March, 1839, an assistant Vice-Chancellorship for the same circuit was established by act, in the same city, which was to continue for three years from the first Monday of May following, and the appointee to hold for two years from the said first Monday. In April of that year Murray Hoffman was appointed to the office, by the Governor and Senate, pursuant to the act. In 1840 the office was made permanent, and the incumbent directed to hold special terms, as the Chancellor should appoint, out of the city of New York, in addition to the other terms in the city.

¹ Smith's History, New York (Carey's ed.), p. 276.

On the 27th of March, 1839, a Vice-Chancellorship for the eighth circuit was also created, the appointment to be made in the same manner and held by the same tenure as the Vice-Chancellorship of the first circuit. In April following, the appointment was conferred on Frederick Whittlesey, of Rochester.

On the 11th of March, 1843, Lewis H. Sanford succeeded Murray Hoffman as Vice-Chancellor of the first circuit, and on the 12th of May, 1846, Mr. Sanford was succeeded by Anthony L. Robertson.

From and after the first Monday of July, 1847, the Court of Chancery was abolished by the Constitution of 1846. Its powers generally were transferred to the Supreme Court organized under that Constitution, and its records deposited in the office of the clerk of the Court of Appeals.

The Constitution also directed that the Legislature might confer equity jurisdiction in special cases upon the County Judge.

On the 24th of March, 1774, James Jauncey, the younger, was appointed keeper or master of the rolls, books, writs and records of the Court of Chancery. He was empowered also to examine, hear and determine all matters and causes then or thereafter pending in the said Court of Chancery, and in all other things to execute the said office the same as the Master of the Rolls in the High Court of Chancery in England, subject to appeals to the Governor of the Province of New York. No order or decree was to be enrolled until the same was delivered to and signed by the said Governor. The office was during pleasure, the King reserving to himself the appointment of all officers in the said Court of Chancery, as by the letters patent might be claimed to be appointed by the said Jauncey as incident or appurtenant to his office.

As the Revolution broke out about this period, and the court is not alluded to in the Constitution of 1777, no farther mention of it is necessary, except that in 1780 George D. Ludlow (one of the New York Colonial Judges of the Supreme Court, at the commencement of the Revolution, and who, adhering to the cause of the Crown, was considered by its adherents still in office, notwithstanding, under the Constitution adopted by New York in 1777, an entire new bench of Judges had been created) was appointed, by the Crown, Master of the Rolls and Superintendent of Police

on Long Island, "with powers on principles of equity to hear and determine controversies till civil government could take place."

In 1783 Mr. Ludlow retired to his Majesty's dominions, in New Brunswick.

That branch of Chancery proceedings which relates to the duties of surrogates has an earlier date in the province than the Court of Chancery itself. The College of Nineteen (representing the five Chambers of the Dutch West India Company, as well as the States General of Holland, one of the members of said College being appointed by the latter), ordained in a charter adopted by them in 1640, that the Governor and Council of New Netherlands should, among other matters, act as an Orphan's and Surrogate's Court.

The Court of the Schout, Burgomasters and Schepens, under the administration of Governor Stuyvesant, acted, among its other duties, as a Court of Probate, in taking proofs of last wills and testaments, and exercised jurisdiction over the estates of widows and orphans.¹

But in 1665, so great was the number of widows and orphans, consequent upon a massacre committed by the Indians on the whites of Manhattan Island and its vicinity, that the Director-General (Stuyvesant) and Council created a separate court entitled the Court of Orphan Masters, whose duties were similar to those of surrogates of our day. The burgomasters presided over this court at first, but soon afterward were relieved of that duty at their request, and distinct orphan masters were annually appointed. This continued till the transfer of the Province to the English in 1664.

In the "Duke's Laws," provision was made to administer intestates' estates and for the recording of wills and letters of administration. The Court of Sessions in each of the three ridings into which the laws divided the Province, acted as a Court of Probate and a Surrogate's Court, and the Mayor's Court also exercised, occasionally, jurisdiction in matters appertaining to these courts.

The record of wills and other instruments of administration, where the estate exceeded one hundred pounds, was required to be in the city of New York, and the recording office was placed

¹ Daly's Judicial Organization of the State.

in charge of the Secretary of the Province, who was Secretary to the Governor. The latter official at length assumed the powers of probate, which were confirmed by an act passed in 1692, which also declared that two freeholders elected in every town should have charge of intestates' estates; likewise that proof of wills should be before the Governor, and letters of administration be granted by him or his delegate. Proof of wills relative to estates in counties adjoining the city of New York was required to be in that city, but in counties more remote the Court of Common Pleas was authorized to take the proof and transmit the proceedings to the record office in New York. A delegate was appointed by the Governor in the above city, who held a Prerogative Court, possessing appellate jurisdiction over the Common Pleas in probate matters and the acts of the two freeholders of the towns.

The Governor also appointed subordinate delegates in various parts of the Province, while the aforesaid freeholders of the towns were also called delegates.

In 1754, the appointment of a Judge of Probate was made, with jurisdiction over the proof of wills and administration of estates, the Prerogative Court still continuing in separate existence.

In 1778 an act was passed divesting the Governor of all powers in the Prerogative and Probate Courts and transferring those powers to the Judge of the Court of Probates of the State, except in the appointment of Surrogates, which appointment was vested in the Council of Appointment.¹

In 1787 the Governor and Council were empowered to appoint Surrogates in every county of the State; the Judge of the Court of Probates of the State holding jurisdiction in cases of decease out of the State, or of the decease of non-residents within the State. Appeal also lay to this Court from the Surrogate Courts.

In 1797 (March 10th) it was enacted, that from 1798 the Court of Probates should be held and remain in the city or county of Albany, and the judge and clerk of said court should remove the papers and documents belonging to said court, to and reside in the said city or county.²

¹ Act to organize the Government of the State, passed 16th March, 1778.

¹ *Greenleaf*, 17.

² 3 *Greenleaf*, 393.

On the 21st March, 1823, the Court of Probates was abolished by act; its records and proceedings were directed to be deposited in the Secretary of State's office, and its jurisdiction was conferred upon the Chancellor. The office of Surrogate, however, was left, and the appointment to it (to continue for four years) vested in the Governor and Senate.

THE SUPREME COURT OF JUDICATURE, as it existed prior to 1821, was created by the celebrated ordinance of 1691. It is necessary, however, to go still further back to account for the knowledge of jurisprudence possessed by the colonists, thus enabling them to erect a court which, surviving all the discontents and changes of colonial times, existed for a period of one hundred and thirty years, and in a different form for a quarter of a century longer.

During the administration of Governor Stuyvesant, the people of the province elected eighteen persons, from whom Stuyvesant appointed a body of nine, to confer with him and his Council on public matters.¹ This body becoming dissatisfied, as well as the people generally, with the arbitrary conduct of the Governor (or Director-General, as he was called), designated Adriaen Van Der Donck to prepare memoranda from which a subsequent remonstrance should be drawn to the States-General relative to the complaints of the Colony.² Stuyvesant seized the memoranda, temporarily imprisoned Van Der Donck, and expelled him from the body of nine men. He, however, drew a remonstrance, which was laid before the States-General by him and two other delegates, sent to Holland for that purpose. This proceeding eventuated, in 1650, in the erection of a tribunal (after a struggle on the part of Stuyvesant and the Amsterdam Chamber against it), composed of a schout (the presiding officer and sheriff), two burgomasters and five schepens. In addition to executive and legislative duties, this tribunal exercised judicial functions. These were very comprehensive, and appear to have been fully adequate to the administration of justice among the colonists. The proceedings of the tribunal were principally those of arbitration, making it really a

¹ O'Callaghan's History New Netherlands, vol. 2, p. 37.

² Remonstrance of New Netherland, by Adriaen Van Der Donck. Translated from a copy of the Dutch MSS., by E. B. O'Callaghan, p. 48.

court of conciliation. This tribunal had moreover a regular system of pleading by declaration, plea and rejoinder; it took the depositions of witnesses, issued commissions for the examination of witnesses beyond the jurisdiction of the court on interrogatories and cross-interrogatories, entered judgments which directed the sale of goods by the officer of the court (the bidding upon the sale being regulated by the time a lighted candle should burn), and levy upon and sale of real property. The origin of the fee bill is also traced to Stuyvesant.¹

In 1664 the Province was surrendered to the English, under Nicholls; it, with other territory, having been granted March 12th, in the above year, by Charles II to his brother, the Duke of York.² The latter's father-in-law, the Earl of Clarendon, as is supposed, framed a code of laws for the government of the Province.³ Under this code (called "The Duke's Laws") courts were established; the principal one of which was the Court of Assize, held once a year by the Governor and Council, together with the Justices of the Peace throughout the Province that wished to attend. It had original jurisdiction in criminal matters, and in those civil and equitable of twenty pounds and upwards;⁴ held trials by jury, and to it lay appeals from the inferior courts.

In 1683 the General Assembly, by an act "to settle courts of justice," erected four courts, viz.: A monthly court in every town, held by three persons commissioned for the purpose, for determining cases of debt and trespass of forty shillings or under, which were tried without a jury, unless one was desired by the plaintiff or defendant.

Secondly. A Court of Sessions in each of the twelve counties of the Province, to be held twice a year; except in the county of Albany and city and county of New York, to be held in the former three times and in the latter four times a year. In Dukes and Cornwall counties (surrendered to Massachusetts soon after

¹ Daly's History of the Judicial Organization of the State.

² Charles made a new grant of this territory. June 29, 1674, to the Duke to prevent doubts as to the latter's title.

³ See Daly's History. The code is in vol. 1 New York Historical Society Collections.

⁴ Smith's History of New York (Carey's ed.), 43.

1698), the times for holding the said court were to be appointed by the Governor and Council.

This court was held by the justices of the peace, or three of them, of the respective counties, except in the city of New York, where it was held by the mayor and four aldermen. It determined all causes, civil and criminal, by a jury, and to it belonged a clerk to draw, enter and keep the records of the pleadings, and a marshal or crier.

Thirdly. A Court of Oyer and Terminer, held in the respective counties, composed of one judge, assisted by four of the justices of the peace of each county commissioned for that purpose. In the city of New York, the mayor, recorder and four aldermen were associated with the judge. It had cognizance of all causes, capital, criminal or civil, and trials at common law, and of actions for five pounds or upwards removed there; and possessed general appellate jurisdiction over the inferior courts.

The act lastly erected a Court of Chancery, which has been described.

In 1688 Lieutenant-Governor Francis Nicholson was left in charge of the Colony, Governor Dongan having been recalled.

The accession of William and Mary to the throne in January, 1689, instituted a new order of things in the Province. Nicholson refusing to proclaim the two sovereigns, Jacob Leisler seized the government in their name and held it until 1691. In January of that year, Governor Sloughter, under a commission from William and Mary, arrived. Leisler, Jacob Milbourne (his son-in-law), and others who had formed his council, were imprisoned.

On the twenty-fourth of March, the Governor and Council ordered for the trial of the prisoners a special Oyer and Terminer, directed to the Judges, which the Governor named with Sir Robert Robertson, Col. Wm. Smith, Wm. Pinhorne and John Lawrence, Esqs., Capt. Jasper Hicks, Maj. Richard Ingoldsby, Col. John Young and Capt. Isaac Arnold, they or any six of them, one of the Judges always being one, to proceed in the said court.¹

On the thirtieth of March, the Governor and Council appointed Col. Nicholas Bayard, Stephen Van Cortlandt and Wm. Pinhorne

¹ Life of Leisler by C. F. Hoffman (Sparks' Am. Biog., 3, 2d series); Doc. Hist., 2, 362.

to prepare evidence against the prisoners, and Wm. Nicholls, James Emmott and George Farewell were assigned as the Crown's Council.

Chief Justice Dudley presided in the court. Six of the inferior prisoners were convicted of high treason. They were, however, subsequently reprieved.

Leisler and Milbourne vainly excepted to the Governor's power to institute a court for judging a predecessor. Leisler then refused, after having fruitlessly appealed to the Crown, to plead to the charge of high treason preferred against him. The jury, however, convicted him and Milbourne of the charge. The Governor, hesitating to order the execution, was invited to a feast, and prevailed upon, while overcome with intoxication, to sign the death warrant. Before he recovered his reason, Leisler and Milbourne were executed, both on the same scaffold.¹ This was on the 16th of May, 1691.

Sloughter being authorized in his commission so to do, convened a General Assembly, which met on the 9th of April, 1691, and continued until the 18th of the succeeding May.*

¹ Chandler's *American Trials*, 1, 263.

* Seventeen members composed this body. The laws made by it were considered paramount to all others in the Province. The compilers of the laws of 1752 (Livingston and Smith) were directed to commence at this Assembly. *Smith* (Carey's ed.), 87, 88.

The number of seventeen became enlarged at the subsequent elections, until it reached that of twenty-seven. In 1774 the Assembly was composed of thirty-one members. *Tryon's Report on the Province*, 4 *Doc. Hist.* (4to), 511.

Previous to 1743, the members were elected for no definite time, and new elections were held whenever the Governor dissolved the Assembly. Sometimes a few months or a year intervened between the elections, but generally they were held every two years until 1716, when the General Assembly then elected continued from June 5th of that year, until August 10th, 1726; over ten years. Four General Assemblies then succeeded, the last ending May 3d, 1737. On the 15th June following, a new House met. Great dissatisfaction had for years existed among the Colonists at the long continuance of the Assemblies, and efforts had been made for more frequent elections, which were foiled by Governor Cosby. On the 16th of December of the above year, however, a bill providing for triennial elections, having passed the House and Council, was sanctioned by Lieutenant-Governor Clarke. The latter sent the bill with a written recommendation to the King, but the Lords of Trade urged its repeal, on the ground of infringement of the Crown's right to call and dissolve the Assembly, and on the 30th November, 1738, the act was repealed by the King in Privy Council. In October previous, however, the above House had been dissolved by Clarke from dissatisfaction on his part. A new Assembly succeeded

On the sixteenth of April the General Assembly appointed a committee, consisting of Messrs. Cortland, Pell, Van Schaick, Beekman, Pierson, Stilwell and Duskberry, to prepare a bill for the establishment of Courts of Judicature in the Province, and to revise the former laws made for that purpose.

The next day the committee reported, and the Attorney-General, Mr. Newton, was directed to draw up a bill in pursuance of a plan for the organization of the courts settled upon by the Assembly.

Mr. Newton, however, at this time leaving the Province for Boston, and Mr. Farewell, who was deputed in his place, neglecting to draw a bill as required, the General Assembly, on the twenty-fourth of April, directed their Speaker, James Graham, to perform that duty; accordingly, the following day, Mr. Graham laid before the Assembly a bill,¹ which, on the sixth of May (O. S.),² was passed by that body into an act "for establishing Courts of Judicature, for the ease and benefit of each respective city, town and county within the Province." *

in March, 1739, continuing until September, 1743, when it was dissolved by Governor George Clinton. The next House met on the eighth of November in that year, and on the December following, an act passed limiting the continuance of the Assembly to seven years. Under this act the House was elected septennially down to the Revolution.

The Governor had an absolute veto upon all bills passed by the Assembly and Council, and the power over the former body of prorogation and dissolution. All laws passed were subject to the King's approbation or disapproval. Such as he disapproved became void.

The Assembly was composed of freeholders elected by the freeholders of the several counties, *viva voce*, upon writs of election issued by the Governor in Council.

It elected its own Speaker (the Governor, however, recommending the choice), chose its own clerk, and originated all bills appropriating money. Its Journals are contained in three printed volumes.

The General Assembly met for the first time on the 17th of October, 1683, under the administration of Governor Dongan. After an existence of about ninety-two years, this body adjourned on the 3d of April, 1775, and never again assembled. *Journals General Assembly*; 4 *Doc. Hist.* (8vo), 244; *James Kent's & B. F. Butler's Discourses before N. Y. Hist. Society*; *Hough's Civil List*.

¹ Journal General Assembly, New York, vol. 1.

² Livingston and Smith's New York Colonial Laws, 1691-1763, p. 4.

* This act is found in the Parliamentary Roll, MSS., deposited in the State Library at Albany, indorsed Anno. R. R. & R. Will. et Mariæ tertio, first Assembly, first session; and, also, in Laws of New York, Bradford's ed., 1694, p. 2, in Secretary of State's office.

On the sixteenth of May (O. S.) this act was assented to by the Governor and Council, and ordered to be enrolled.¹

The act organized Courts of Justices of the Peace for every town; affirmed the powers of the Courts of Mayor and Aldermen in the cities of New York and Albany; provided for a High Court of Chancery the same as in the act of 1683; created a Court of Sessions, and one of Common Pleas for every county, and a Supreme Court of Judicature.

This Court, to be composed of five judges at least, "appointed and commissioned for that purpose," two of whom, together with one Chief Justice, to be a quorum, was to be held on the first Tuesdays of April and October in every year, for the space of eight days, at the city of New York. It was empowered to try all pleas civil, criminal and mixed, as fully and amply as the English Courts of King's Bench, Common Pleas and Exchequer. Any action, the debt or damages whereof amounted to upwards of twenty pounds, could be commenced in or removed to said court. Any judgment, information or indictment had or depending in the Courts of Mayor and Aldermen, Sessions or Common Pleas could be removed to said Court, which might correct errors in judgment or revise the same, provided the judgment removed was upwards of twenty pounds.

The judges were also authorized to make rules and orders to guide the practice and proceedings of the court.

The act likewise established trials by jury in all the courts (except the Justices' Courts, and there by consent of parties), in all cases, except in those of default or where matters of fact were acknowledged.

¹ The following extract from the Journal of the General Assembly shows the manner in those quaint times of procedure in such cases:

"The house went to the fort to his Excellency and Council, who altogether went to the Town Hall, and there read off and proclaimed the several acts following, viz.:

"A list or catalogue of the several bills sent up from this house to the Governor and Council for their assent and ordered to be enrolled as follows, viz:

"A bill for establishing Courts of Judicature, &c.

"A bill," &c., &c., &c. See *Journal of the General Assembly, New York*, 1691, 1692-1765, vol. 1, p. 14.

Appeals lay from the court to the Governor and Council¹ for any judgment above one hundred pounds. This amount, in 1753, was altered to three hundred pounds.

No provision was made in the act for a Court of Oyer and Terminer. Its name, however was retained in the Supreme Court to designate the latter's criminal circuits.²

The act was limited to two years, and until the end of the next Assembly after the expiration of the above period.

On the 11th of November, 1692, another act was passed establishing the courts for two years longer after the expiration of the former act. This act changed a provision of the former act by providing that the terms of the court should be holden for the county of Orange, as well as for the city and county of New York, on the first Tuesdays in April and October annually, in every year; for the city and county of Albany, the first Tuesday in May; for Ulster and Dutchess counties, the third Tuesday in May; for the county of Westchester, the last Tuesday in June; for Kings county, the first Tuesday in August; for Queens county, the second Tuesday in August; for Suffolk county, the third Tuesday in August; and for Richmond county, the second Tuesday in June.

¹ The Council consisted at first of seven, but was increased to twelve members, any three forming a quorum. In acts of civil government they acted as a Privy Council to the Governor. They could be appointed and suspended by the latter until the pleasure of the Crown could be ascertained. They were, however, more regularly appointed by the mandamus and sign manual of the King. They formed the Upper House or Senate in the Colonial Legislature, and, with the Governor, a court of last resort. When they sat as a Court or a Privy Council, they assembled at the Fort; when as a legislative body, at the City Hall. They were convened by the Governor, who met with them in their capacity as Court or Council, but not when in their legislative meetings. They sat according to seniority, and the oldest member present was speaker. The chairman had no voice in a committee. One of their members bore their messages to the Assembly, which always rose at his entrance and received the messages standing.

The members received no salary, although their duties were, from about 1756, quite onerous. The board had great weight in the Colony, as about the same period lawyers of distinction were made members.

Neither the Council nor General Assembly permitted strangers to be present at their meetings.

² Daly's Judicial Organization New York.

It also provided that one of the justices should, once in every year, at the above times and places, go the circuit and hold the Supreme Court in each of the above counties where process was issued and pleas were depending, assisted by two or more of the Justices of the Peace of the respective counties where the court was holden; and that the sessions should continue five days only in the city of New York, and two days at the other places.¹

On the 24th of October, 1695, a further act was passed, extending the provisions of the last act for two years;² and on the 21st of April, 1697, a last act continued them for one year longer.³ In 1698 no other act relative to the extension of the courts was passed, consequently the Province was left without any judicial organization. This state of things continued until 1699, when the courts (with the exception of the Court of Chancery), by an ordinance of Governor Bellamont and Council, issued on the fifteenth of April, were established on the same footing as when they expired.³

On the 15th of May, 1691, nine days after the passage of the first act, Joseph Dudley was appointed Chief Justice, Thomas Johnson second judge, and William Smith, Stephen Van Cortlandt and William Pinhorne, associate judges of the Supreme Court.

James Graham was shortly after appointed Attorney-General.

Dudley and Johnson were allowed salaries, the first one hundred and thirty pounds, and the second one hundred pounds per annum, but the other judges and the Attorney-General were allowed nothing for their services.⁴ In 1693, however, the salary of Attorney-General Graham was fifty pounds per annum.

On the 30th August, 1692, (the day after the arrival of Colonel Benjamin Fletcher as Governor), Joseph Dudley was removed from his office of Chief Justice by reason of his being a non-resident.⁵

On the 7th June, 1698, William Pinhorne and Chidley Brooke, Justices of the Supreme Court, were suspended from their offices by Governor Fletcher; the first for speaking disrespectful words of the King, and the second for "carelessness, negligence and backwardness."⁶

¹ New York Laws (Bradford's ed., 1694), 64.

² Parliamentary Roll, MSS. Laws.

⁵ Smith (Carey's ed.), 93.

³ 2 Revised Laws, 1813. Appendix.

⁶ Council Minutes, vol. 8, 46, 47.

⁴ Smith (Carey's ed.), 89.

From the period of Governor Bellamont's ordinance in 1699, the court had a continuous existence down to the Revolution.

The terms were changed from time to time to accommodate the business of the court and the convenience of parties.

On the 3d of April, 1704, Lord Cornbury, succeeding Nanfan in the administration of affairs, issued with his Council, an ordinance that the court should be held on the first Tuesdays in June and September and second Tuesdays in October and March in every year, at the city of New York, or at such other places as the Governor should appoint by proclamation issued twenty days before the holding of said court; and that each term should continue only for the space of five days.¹

On the 6th of August, 1750, an ordinance was issued by Governor George Clinton and Council, stating that by reason of the cold and difficulty of traveling in January, and the heat and harvesting in July, and the October and April terms being too short for the business to be performed, thereafter the court should be held at the city of New York, viz., on the third Tuesdays in October, January and April, and last Tuesday in July in every year. The terms of April and October to be held every day except Sunday, from the commencement until the end of Thursday in the week next ending, and the terms of January and July from the commencement until the end of Saturday next ending.

In the October and April terms it was directed there should be four return days, viz., the first day, and Friday, Monday and Wednesday following; and in the January and July terms there should be two return days, viz., Tuesday and Friday.

On the 30th October, 1760, this ordinance was reiterated by Lieutenant-Governor Colden and Council, extending at the same time the April and October terms until the end of Saturday instead of Thursday of the next ensuing week.

The ordinance also empowered the justices, one or more, every year to go into every county in the Province and hold a court for the trial of such causes arising in the respective counties as were brought to issue in the said Supreme Court, which causes the said justices, one or more of them, were empowered to try and give judgment at the next or any subsequent term of said

¹ 2 Revised Laws, Appendix.

court after the trial; the court to last as long as necessary, not exceeding six days. The court was to be held in Albany, Dutchess, Ulster and Orange counties in June, and in Kings, Queens, Suffolk and Westchester counties in September, and Richmond county in May.

The act of 1691 directed that five judges at least, viz., a Chief Justice and four assistant justices, should be appointed, but the ordinance of Lord Bellamont made no provision as to the number of the judges.¹

Chief Justice Attwood contended, in his memorial to the Lords of Trade² in 1701, that the Chief Justice could alone hold the court. He did so in his own case until the appointment of Abraham De Peyster and Robert Walters, as associate judges in the above mentioned year.³

This organization of a Chief Justice and two associates, continued until 1758, when David Jones was, on the twenty-first of November in that year, appointed Fourth Justice (*i. e.*, third associate justice), by Lieutenant-Governor De Lancey,⁴ who also continued to act in his capacity of Chief Justice.

Henceforth, until the Revolution, the court consisted of a Chief Justice and three puisne or junior judges.

¹ Ch. J. Attwood to Lords of Trade. *Col. Doc.* 4; *Lond. Doc.*, 15, 923.

² The Board of Trade and Plantations (succeeding a committee of the King's Privy Council, called the Committee of Trade) was erected by a commission from William III, dated May 15, 1696. This commission was revoked, and the Board permanently established, with the same powers, by another commission dated July 6, 1697. The Board consisted of a President and seven members, called the Lords of Trade, the objects being the promotion of trade and the superintendence of the Colonies. The violations by the latter, and particularly the city of New York, of the laws of trade, which were vigorous and severe, called for their frequent interference.

At first the advice and aid of the King's Advocate-General, as well as the Attorney and Solicitor-Generals, were rendered to the Board, but at length its legal business became so large as to lead to the special appointment of one of the King's Counsel to conduct its law affairs, although the advice of the three former was obtained on special occasions.

The Board was abolished by act of 22 George III (chapter 82), to take effect on or before the 10th of October, 1782, and its powers were conferred on a committee of the Privy Council, which was formally appointed by his Majesty in August, 1786. 2 *Hildreth*, (1st Series), 197; 3 *Bancroft*, 59; 4 *Col. Doc.*, 145; *Chalmers' Colonial Opinions*; *English Statutes at Large*, 15, 351, 354.

³ Attwood to Lords of Trade, as above.

⁴ Records of Commissions, vol. 3. 5

Two clerks were attached to the court, one at the city of New York attending upon the sessions of the supreme branch, the other upon the circuits. The former sealed all the process, and kept the records.¹

The salaries of Chief Justice Dudley and Justice Johnson, have been already stated. In 1698 the salary of William Smith, Chief Justice, was one hundred pounds per annum.²

Abraham De Peyster, the Chief Justice, immediately preceding Attwood, received no salary. He, however, held the office only for necessary process, and without pretending to judge in any case.³

In 1702 Chief Justice Attwood's salary was three hundred pounds a year, paid out of the King's own Exchequer; that of Abraham De Peyster, the then Second Judge, was one hundred and fifty pounds; Robert Walters, the Associate Judge, was allowed fifty pounds,⁴ and James Graham, the Attorney-General, one hundred and fifty pounds; the latter also paid from his Majesty's Exchequer.⁵

This salary to the Chief Justice must have been temporary, for Governor Montgomery, in his letter of 30th June, 1729, to the Lords of Trade,⁷ states that the salary of the above mentioned officer had been one hundred and thirty pounds a year from 1691 to 1715, when this sum was raised by a resolve of the General Assembly to three hundred pounds. The resolve, however, stated it was for holding the circuit, and limited the three hundred pounds per annum to five years.⁸ Montgomery also states, in the same letter, that the Second Judge and the Attorney-General, who had before, each of them, one hundred pounds a year salary, had now nothing in the said resolve.

¹ Smith (Carey's ed.), 272, writing in 1756. Gov. Tryon in his report on the Province of New York, in 1774, states there was but one clerk of the Supreme Court, and that the office had always been held as an appendage to that of the Secretary of the Province. 1 *Doc. Hist.*, 512 (4to).

² Bellamont's letter to the Lords of Trade. *Col. Doc.*, 4, 442.

³ Ch. J. Attwood to the Lords of Trade. *Col. Doc.*, 4, 925.

⁴ Journal General Assembly, 1, 115.

⁵ Daly's Judicial Organization, New York.

⁶ Journal General Assembly, 1, 115.

⁷ Colonial Documents, 5, 878.

⁸ Journal General Assembly, 1, 375.

In 1765, the General Assembly allowed to Daniel Horsmanden, as Chief Justice, and for holding the circuit, three hundred pounds, from 1st September in the above year, to the 1st September, 1766; to David Jones, as Second Justice, Wm. Smith, as Third, and Robert R. Livingston, as Fourth Justice, and for holding the circuits, the sum each of two hundred pounds, for the time aforesaid. To John Tabor Kempe, Attorney-General, for certain extraordinary services performed by him in his station, one hundred and fifty pounds.¹

In 1774, the salary of Chief Justice Horsmanden was five hundred pounds sterling, paid by the Crown, and three hundred pounds New York currency, paid by the Province. That of the puisne judges, Robert R. Livingston, George D. Ludlow and Thomas Jones, was each two hundred pounds New York currency, paid by the Province. That of the Attorney-General, John Tabor Kempe, was three hundred and fifty pounds sterling, paid by the Crown, and one hundred and fifty pounds New York currency, paid by the Province, as allowance for extra services.²

The Chief Justices who succeeded Attwood (with the exception of De Lancey) received their appointment from the Crown, as did the Attorney-General, and all held during pleasure. The tenure by which the puisne judges held their offices, was fluctuating. They were appointed by the Governor, and, until the period of Governor Clinton, from 1743, held during pleasure. Governor Clinton, however, granted commissions to the puisne judges to hold during good behavior, and he appointed De Lancey Chief Justice on the same condition. In 1761, while Cadwalader Colden acted as Lieutenant-Governor, the judges applied for new commissions (by reason of doubts as to whether said commissions had not been determined by the death of George II, in 1760), on the condition of good behavior. This was refused by Colden, and the judges threw up their commissions. Horsmanden and David Jones, however, at length accepted commissions during pleasure.

The General Assembly, in 1763, memorialized George III for the appointment of the Chief Justice and Associate Judges to be

¹ Journal General Assembly, 2, 791.

² Governor Tryon's Report on Province of New York. 1 *Doc. Hist.*, 521, 522.

during good behavior, but the Treasury Board, to whom the matter was referred, decided that the Chief Justice should hold during the Crown's pleasure, and the tenure of the judges, thereafter, was according to the will of the King.

The judges performing an annual circuit through the counties, carried with them a commission of Oyer and Terminer, in which several of the county justices were associated. A *dedimus potestatem* was also issued by the Governor.

The judges, and those practicing before them, wore no peculiar costume, nor was there, in 1756, any distinction or degrees among the lawyers.

The usual requirements for admission to practice were a college or university education, and three years apprenticeship under an attorney. If the above education was wanting, then seven years service under an attorney was required. In either case the Chief Justice recommended the candidate to the Governor, who thereby, under his hand and seal at arms, granted a license to practice. This being produced to the court, the usual State oaths and subscription were taken, with an oath for the candidate's upright demeanor, and he was then qualified to practice in every court in the Province.¹

About 1682, special pleading in the English language and mode came somewhat into use. Previous to this, although the papers before the court were required to be in the above language, the English form of pleading was so blended with that of the Dutch, as rendered it difficult of being distinguished. It was only between 1704 and 1718 that the English proceedings and practice were brought into general use.²

On the 27th November, 1741, it was enacted that the Justices of the Supreme Court should hold Circuit Courts, without any special commission from the Crown under the Seal of the Colony.³ This act was limited to six years, but by another act in 1746, it was made perpetual.⁴

On the 19th of November, 1745, it was enacted that actions under twenty pounds should be brought in the inferior courts,

¹ Smith (Carey's ed.), 271, writing in 1756.

² Daly's Judicial Organization, 29.

³ Van Schaack's New York Colonial Laws, 221.

⁴ Van Schaack's New York Colonial Laws, 272.

and not be removed except by writ of error into the Supreme Court, under the penalty of twenty pounds.¹ Suits under that sum, brought in inferior courts, were to be tried there, though the cause of action arose out of their jurisdiction.²

The justices were empowered, by act of May 3d, 1746, to commission as many persons as they should see fit, in all the counties in the Colony, to take affidavits, to be read in any cause depending in the Supreme Court, as Masters of Chancery extraordinary used to do.³

On the 19th of April, 1786, it was enacted that issues joined in the Supreme Court, should be tried in the counties where the lands were situated, or the cause of action arose, or the offense was committed, unless the said court should order a trial at the bar of the said court; only, however, to be done in cases of great difficulty or which required great examination. This, however, was not to extend to any action merely transitory, nor to prevent the said court from ordering trials by foreign juries in all proper and necessary cases.

The justices, some or one of them, were once in each year, in the vacations, and oftener if need be, to hold Circuit Courts in each of the counties of the State, for the trial of all issues joined in the Supreme Court, or in any other court, and brought into that court, to be tried, and which were triable in the said respective counties.

They were to hold the courts without any other commission and return the proceedings to the said Supreme Court at the next term, which should record the same and give judgment thereon according to law. The justices were likewise empowered, without any other commission, to take assizes of *Novel Disseisin*, or any other assizes at the said several Circuit Courts.⁴

From early Colonial times, the authority for holding the court of Oyer and Terminer and General Gaol Delivery, was, by a commission issued by the Governor, directed to the judges named in the commission, and the practice so continued until 1788. On the twenty-second of February in that year, however, it was enacted

¹ Van Schaack's New York Colonial Laws, 255.

² Van Schaack's Colonial Laws, 255, 256.

³ Van Schaack's Colonial Laws, 270.

⁴ Jones and Varick's New York Laws, 303.

that the Justices of the Supreme Court, or any of them, with certain designated local magistrates, should hold courts of Oyer and Terminer, without any commission, at the same times as the Circuit Court, and continue to hold them till the business was dispatched, whether the Circuit Court were so long continued or not. The local magistrates were, any two or more of the judges and assistant justices of the courts of Common Pleas of the respective counties of the State, associated in the city of Albany with the Mayor, Recorder and Aldermen. In the city of New York the local magistrates were, the Mayor, Recorder and Aldermen alone, two or more of them. These local magistrates were restrained from sitting or acting as justices of any court of Oyer and Terminer out of their respective cities or counties.

The Governor, however, with the advice and consent of the Council of Appointment, could issue commissions of Oyer and Terminer in manner and form as heretofore used, whenever occasion required; the justices of the Supreme Court always to be named in such commissions, with such others as the Governor and said Council should think proper; and no such commissions were to be executed, or proceedings be thereupon had, without the presence of one or more of the said justices. The said courts of Oyer and Terminer were authorized to direct their process into any city or county.

It was further provided that the Justices of Assize and Oyer and Terminer should, once in every year, send all their records and processes, determined and put in execution to the Exchequer, there to remain of record; and also that the justices to take assizes, and of the Oyer and Terminer, should allow no person, little or great, to sit with them on the bench at their sessions.¹

In 1789, it was enacted that all issues joined or brought into the Supreme Court, triable by a jury of any county in which the said court should sit, might be tried either at the Circuit Court of such county, or at the bar of the said Supreme Court, when it sat in such county, without any order of said court for that purpose.² This was, however, altered in 1797, so as to render an order of the court necessary for such trial.³

¹ 2 Greenleaf, 81-84.

² 2 Greenleaf, 261.

³ 3 Greenleaf, 362.

On the 12th of February, 1796, the office of Clerk of the Circuit and Oyer and Terminer Courts was abolished, and the County Clerks were made, *ex-officio*, clerks of said courts. Seven Assistant Attorney-Generals, for as many districts, to appear in the latter court, were also appointed.

On the 27th November, 1741, the General Assembly passed an act "to revise, digest and print the laws of the Colony from the happy revolution:"¹ viz., from the accession of William and Mary. The execution of the work was deputed to Daniel Horsmanden, then Third Justice of the Supreme Court, as well as Recorder of the city of New York. He, however, did not undertake it, but compiled, and in 1744, published instead, the *History of the Proceedings of the celebrated Negro Plot*.²

In 1752, a digest of the Colonial Laws (the first regular collection made), pursuant to an act of the General Assembly, from 1691 to the above year, prepared by William Livingston and William Smith, Jr., was published. It was extended by the same persons from the 11th of November, 1752, to 22d of May, 1762.

In pursuance of a subsequent act of the General Assembly, Peter Van Schaack, in 1774, published another Digest of the Laws of the Province, prepared by him, extending from 6th May, 1691, to 8th March, 1773.

William Bradford published the following editions, viz., 1694, 1710, 1713, 1716, 1719 (this edition was reprinted in London by John Baskett, by order of the Lords Commissioners of Trade and Plantations), and 1726.

Great irregularity appears in the publication of these respective editions, making it impossible to show the precise periods they are meant to embrace. They were probably printed sheet by sheet as the acts were passed.

From 1691 to 1799 no regular reports of cases were made. In 1804, a law was passed authorizing the court to appoint a reporter, who collected and published the reports from 1799 to 1803.³ From the latter period they were continued so long as the court

¹ Journal General Assembly, vol. 1, 827.

² Smith (Hist. Lib. ed.), vol. 2, p. 80.

³ Preface to 1 Johnson's Supreme Court Reports.

existed. But although there were no systematic reports during the period first mentioned, isolated cases, occurring particularly in the first half of this period, have been published. Minutes of the court also have been preserved. Those from October 4, 1693, to October 5, 1700, while William Smith presided as Chief Justice, are published in the collections of the New York Historical Society.

Of the early trials, the first we shall mention is that of Col. Nicholas Bayard, in 1702, involving as it did, the liberty of speech and opinion in the Province.¹

During the administration of Leisler, and for some time after his judicial murder, the Province was divided into Anti-Leislerites, or "people of figure," and Leislerites, or the democratic portion of the people. Colonel Bayard belonged to the former faction, and was instrumental in the condemnation and execution of Leisler.

Governor Bellamont had sided with the Leislerian faction, and the present head of the Colonial government, Lieutenant-Governor Nanfan, took the same position. Information having been received of the appointment of Lord Cornbury, as the successor of Bellamont, and the Leislerites having a majority in the General Assembly in 1702, the Anti-Leislerites concerted measures to influence the mind of Cornbury to their side. For this purpose, Colonel Bayard procured the signing of three addresses, to the King, the House of Commons, and Lord Cornbury,² containing charges of bribery and oppression against Nanfan, Chief Justice Attwood and the General Assembly, with imputations upon the memory of Lord Bellamont.

Under an act, the first passed by the Assembly of 1691,³ which declared that any person endeavoring, on any pretense, by force of arms or otherwise, to disturb the peace of the Province, should be deemed a traitor, and which Bayard, when his party were uppermost, had himself greatly aided to procure, Bayard was, by Nanfan's order, committed to prison. A special Court of Oyer and

¹ Howell's State Trials, vol. 14, 471-516; Chandler's American Criminal Trials, vol. 1, 269-294; 2 Hildreth's History of the United States (1st series), 204.

² Cornbury's reasons for suspending Attwood. *Lond. Doc.*, 15; *Col. Doc.*, vol. 4, 1011.

³ Parliamentary Roll MSS., Laws of N. Y. (Bradford's ed., 1694, p. 1.)

Terminer, consisting of Chief Justice Attwood, and the Associate Judges Abraham De Peyster and Robert Walters, was commissioned, and on the 7th of March, 1702, Bayard was brought to trial. Sampson Shelton Broughton, the Attorney-General, having given his opinion against the prosecution of Bayard, Thomas Weaver, appointed Solicitor-General for the purpose, conducted the proceedings. Messrs. Nicholls and Emot were counsel for Bayard, who was convicted of treason and condemned to be executed. Lord Cornbury, however, whose opinions coincided with those of the Anti-Leislerites, arrived during this period, suspended Attwood, De Peyster and Walters from their offices, as well in the Council as on the Bench, and succeeded in having the attainder of Bayard and that of Alderman John Hutchinson, convicted of the same offense with Bayard, reversed by Queen Anne. The latter, upon a hearing of the case before the Privy Council, sanctioned also the removal of the Chief Justice and the associate judges, as well as Weaver, from the Council of the Province.¹ Attwood, against whom, moreover, charges lay of corruption and partiality on the Bench,² being removed from his Chief Justiceship, William Smith, who had held the office for several years previous, and who had been one of the Commissioners of Oyer and Terminer, appointed by Governor Sloughter, that tried Leisler,³ was appointed in his place.⁴ Attwood and Weaver fled to Virginia, thence to England, under assumed names.⁵ Dr. John Bridges was made Second Justice of the Supreme Court in place of De Peyster,⁶ and the act under which Bayard was convicted was presently repealed by Queen Anne's special order.⁷

The second trial noticed, viz., that of Francis McKemie, in 1707, was one by which not only religious toleration was vindicated and sustained, but arbitrary conduct and an attempt at tyranny were rebuked and foiled.

¹ Colonial Documents, vol. 4, 1024; London Documents, 15.

² Colonial Documents, vol. 4, 1010; London Documents, 15.

³ Thompson's History of Long Island, vol. 2, Appendix, 444.

⁴ June 9, 1702.

⁵ Smith (Carey's ed.), 119.

⁶ June 14, 1702.

⁷ 2 Hildreth, 205.

At this period, the people of the city of New York were composed of Calvinists of the Holland Dutch Church, French refugees of the Geneva platform, a few English Episcopalians, and a still smaller number of English and Irish Presbyterians who assembled for worship every Sunday at a private house, having neither church nor preacher. In January, 1707, Francis McKemie and John Hampton, two preachers of the Presbyterian faith, arrived at the city of New York. The Dutch Calvinists consented to McKemie's officiating in their church, but Lord Cornbury, who was opposed to the whole persuasion, forbade it; consequently, upon the next Sunday, the service was conducted at a private house with open doors. Mr. Hampton officiated the same day at the Presbyterian church in New Town, a few miles distant.

Two or three days after, McKemie and Hampton were arrested, on Cornbury's warrant, for preaching without his license. Although the English ecclesiastical statutes did not extend to the Province, Protestants of all denominations having there equal rights and privileges, the defendants unskilled in the law supposed they did, but relied as their defense upon the toleration act, offering to show they had complied with the act in Virginia and Maryland, and promised to certify the house at the next sessions in which McKemie had preached.

Lord Cornbury, however, assisted by May Bickley, the then Attorney-General of the Province, insisted that as the statutes did not extend to the Province, neither did the toleration act. His license to preach being therefore necessary, the defendants not possessing it had violated his orders (which, however, had never been published), and consequently he committed them to jail.

After a confinement of about six weeks, the defendants were brought before Chief Justice Mompesson on *habeas corpus*, and Cornbury, apprised of the illegality of the first warrant, and knowing the legal ability of the Chief Justice, issued another on the ground that the defendants were not qualified as the toleration act required. They were then bailed to the Supreme Court shortly about to sit; and exertions having been made to obtain a grand jury for the purpose, an indictment was found, several Dutch and French Protestants being on the jury.

On the 6th of June, McKemie (Hampton being discharged, no evidence against him having been presented to the grand jury) was brought to trial before Chief Justice Mompesson, and the Associate Justices Milward and Wenham. Attorney-General Bickley, "who was rather remarkable," says Smith, "for a voluble tongue than a penetrating head or much learning," managed the proceedings in behalf of the Crown, Messrs. Nicholls, Jamison and Reignere on the part of the defendant. The indictment was that McKemie, pretending "to be a Protestant dissenting minister, contemning and endeavoring to subvert the Queen's ecclesiastical supremacy, unlawfully preached, without the Governor's license first obtained, in derogation of the royal authority and prerogative; and that he used other rites and ceremonies than those contained in the common prayer book."

The indictment farther charged that the defendant, not being legally qualified to preach, did nevertheless preach and at an illegal conventicle being contrary to the form of the ecclesiastical statutes of England.

Bickley insisted upon the ecclesiastical supremacy of the Queen; that it was delegated to the Governor, and hence that the latter's instructions had the force of a law. He contended also for the extension of the statutes of uniformity.

Reignere, on the contrary, contended that, by the common law, preaching was no crime; that the Governor's instructions were not laws, and that the statutes of uniformity and the toleration act did not extend to the Province. Nicholls and Jamison spoke to the same effect. McKemie concluded with a speech in his own defense, which according to Smith placed "his capacity in a very advantageous light."

A special verdict was advised by Chief Justice Mompesson, but the jury acquitted McKemie, who was not, however, freed from his recognizance until he had been compelled to pay all the fees of his prosecution.¹

The trial of Van Dam, in 1733, and of Zenger, in 1735, will be noticed in the description of the Court of Exchequer. The former, by being the means of Chief Justice Morris' removal by Cosby, on

¹ For a full report of this trial, see Force's *Historical Collections*, vol. 4.

account of his opinion that the Supreme Court had no authority to proceed in equity, contributed largely to the division of the Colony into two parties. The controversy between the two existed for many years, with the Court of Chancery as the principal bone of contention.

The latter trial vindicated humble weakness and the liberty of the press against oppressive proceedings on the part of power, as well as the doctrine that truth should constitute a defense in libel, and that the jury are the judges both of the law and the fact.¹

The last to be noticed is the Negro Plot. In its narrative will be found such credulity and cruelty, and such a prostration of all that appertains to a manly nature before universal fear, as have been rarely recorded.

True, the acts were committed when the whole community lived in dread of the slaves; but even with the greatest allowance, it is difficult to realize how men of education and ability, of stainless reputation and moral worth, could so far warp the sanctities of law, and so far forget the common instincts of humanity, as to commit such acts, and that too without mercy or remorse.

The narrative of the Plot was drawn by a participant in its excitements and a firm believer in its existence. Daniel Horsmanden was the author, then the third justice of the Supreme Court and Recorder of the city of New York. He, in connection with Chief Justice De Lancey, or Frederick Philipse, Second Justice, sat on the bench on nearly if not all the trials of those charged with this (to use his own language) "inhumane, horrible enterprize," in which trials, "so many of the wicked instruments of it were brought to justice, whereby a check has been put to the execrable malice and bloody purposes of foreign and domestic enemies, though we have not been able entirely to unravel the mystery of this iniquity; for 'twas a dark design, and the veil is in some measure still upon it."

In the spring of 1741, a strange rumor began to creep through the little city of New York, numbering about ten thousand inhabi-

¹ Gouverneur Morris declares this trial to be the germ of the American Revolution.

tants, of whom between seventeen and eighteen hundred, men, women and children, were slaves.¹

The rumor was, that a plot existed among the slaves to burn the city and massacre the inhabitants. This received countenance, from the fact, that in 1712 an insurrection had occurred among the slaves, who had set a house in flames, and before their dispersion by the train band had put several citizens to death.

The commencement of this excitement was the robbery, on the night of the 28th of February, 1741, of a house belonging to Robert Hogg, a merchant of the city of New York, of coins, medals, wrought silver, &c.

Suspicion was pointed at John Hughson, the keeper of a low tavern, to which negroes were in the habit of resorting. A girl of sixteen, Mary Burton, an indented servant of Hughson, informed against the latter, who acknowledged that a portion of the goods had been brought to his house, which portion he delivered to the magistrate.

¹ The city extended then from Fort George (a square with four bastions), at the present Battery, north along the east side of Broadway, as far as the present Spruce street, a little beyond the commencement of the city commons, which extended upward. Along the East river the houses were quite compact, and there were public markets at the foot of each street. The Dutch, English and French churches, and the City Hall (the latter in Wall street), were near each other, toward the upper part of the city. The winding streets were, in the summer, embowered in the foliage of the water beach and locust. The commons (the present park) were uninclosed, bounded to the east by the road to Boston (Chatham street), and by Broadway, to the west. This area, the site of an Indian village, was in early Dutch times known as the Vlachte, and was the pasturage ground of the gables scattered around a fort, known as New Amsterdam, where the kine grazed under the superintendence of a city herdsman; in it, on the 30th of July, 1673, Colve's troops formed for their march down Broadway to the successful attack on Fort James (as the fort was at that time called), then under command of Captain John Manning, and it was the scene of the executions in the Negro Plot. *Valentine's Manual and History of New York.*

A line of palisades extended from the Hudson to the East river, about where runs the present Chambers street, with a block-house a little east of Broadway. Beyond the palisades to the north were the two Collect ponds. On the west side of Broadway was the King's Farm, and in the corner, formed by George and Frankford streets, was the grave of the patriot Leisler.

A palisade also extended at the north or land side of Fort George.

Another inmate of Hughson's, Peggy Kerry, who had previously resided at one John Romme's, was also implicated by Mary in the robbery.

Both Hughson and Peggy, although they denied the charge, were committed to prison.

On the eighteenth March following, a fire occurred by which the Government House, the King's Chapel, the Secretary's office, the barracks and stable, all situated at Fort George, were consumed. This created alarm, and in the evening the captain of a militia company beat to arms and had over seventy men ready for service all night.

This fire was followed day after day by other burnings, many of them, however, merely those of chimneys. Although the conflagration at Fort George was accounted for by Lieutenant-Governor Clarke himself, in a message to the Assembly, from the sparks of a fire-pot, carried by a plumber who that morning had repaired the gutter between the Government House and Chapel, others were most probably incendiary, and the whole lashed the community into the greatest terror.

Some time previous, a Spanish vessel, a portion of its crew being negroes, had been brought to New York as a prize, and the negroes sold at vendue, having been condemned by the Court of Admiralty as slaves. Asserting themselves freemen, they complained of being thus sold. A cry was immediately raised against them as being implicated in the fires; they were imprisoned and at length the slaves of the city, as a body, became the objects of suspicion. Many were hurried off to jail, and the panic increasing, the Lieutenant-Governor, at the request of the Common Council, issued a proclamation offering one hundred pounds to any white person and a pardon (if concerned therein); twenty pounds, freedom and pardon to any slave with twenty-five pounds to his master, and forty-five pounds with pardon to any free negro, mulatto or Indian, who should discover any one concerned in the fires.

Mary Burton, after this proclamation, at the session of the Supreme Court, held on the 22d April of the said year (1741), stated to the grand jury that she had heard three negroes, Cuffee, Cæsar and Prince, who were in the habit of meeting at Hughson's,

talk while there of a plan to burn the town in the night, and when the white people came to extinguish it, to destroy them; that her master (Hughson) and mistress promised to aid the negroes, and when all was accomplished that Cæsar was to be Governor and Hughson King; and further, that she never saw any white persons present when the burning of the town was talked of, but her master, mistress and Peggy Kerry.

The Second and Third Justices holding the court, viz., Frederick Philipse and Daniel Horsmanden, summoned the seven lawyers of the city, Messrs. Murray, Alexander, Smith, Chambers, Nicholls, Lodge and Jamison (the Attorney-General, Bradley, being indisposed), for counsel in the emergency; the term of the Supreme Court, limited to eight days, was enlarged, and the above lawyers offered their assistance in their turn at every trial of the conspirators.

Every day there were examinations and confessions. Peggy Kerry at first denied all knowledge of the alleged conspiracy, but at length, Hughson, his wife Sarah, and herself, having been convicted as receivers of the stolen goods belonging to Hogg, Peggy implicated John Romme (who also kept a low tavern) and his wife, in the conspiracy, with several negroes other than Prince and Cæsar who had previously been convicted as principals in the robbery of the said goods. The latter were hanged for the robbery, denying to the last, however, any knowledge of the conspiracy, and the body of Cæsar, was hung in chains. The negroes implicated by Peggy were arrested, as was Romme's wife, but Romme absconded, although subsequently retaken.

On the twenty-ninth of May, Quack (another negro implicated) and Cuffee were brought to trial for the conspiracy.

The Attorney-General appeared for the prosecution, assisted by Messrs. Murray and Smith. The prisoners had no counsel. Mary Burton was the principal witness; other witnesses, among whom was Arthur Price, a thief, and two negroes, also bore evidence against the prisoners. Witnesses on their side were called, but the prisoners were convicted and sentenced to be burned at the stake. Although they had previously asseverated their innocence, while at the stake they made all the required admissions and, in compliance with the wishes of the excited populace

(although a discretionary reprieve was allowed by the Lieutenant-Governor, on the representations of Mr. Moore, the Deputy Secretary and Clerk of the court, that the reprieve might produce more discoveries), they were burned. Hughson and his wife were already under sentence of death as receivers of the stolen goods, but they were, together with Sarah their daughter, and Peggy Kerry, on the fourth of June, brought to trial for the conspiracy. Again the Attorney-General conducted the prosecution, assisted by Messrs. Murray, Alexander, Smith and Chambers. Again no counsel appeared for the prisoners. Mary Burton and Arthur Price, with other witnesses, testified against them. Witnesses were called on their part, but the prisoners were convicted and sentenced to death, although they severally spoke in their justification, protested their innocence, "declared that all the witnesses had said against them was false, and called upon God to witness their asseverations."¹ Hughson, his wife and Peggy (the daughter being respited in the hope of confession), were hanged, protesting to the last their innocence; Peggy, the evening before her execution, declaring to Justice Phillipse, that she had forsworn herself, and that all she had testified to about Roome and his wife, except as to being receivers of stolen goods, was false. The body of Hughson was hung in chains. His daughter Sarah, after being respited for three weeks, was ordered to be executed, she continuing to deny all knowledge of the conspiracy. On the day fixed for her execution, however, she confessed her knowledge of the matter, and was farther respited. Again and again, however, did she recant what she confessed, "until the judges thought themselves under a necessity of ordering her execution as the last experiment to bring her to a disposition to unfold this infernal secret, at least so much of it as might be thought deserving a recommendation of her, as an object of mercy."² Under threats of execution from day to day, she would still confess and recant, until on the twenty-ninth of July, over six weeks after her first respite, "she produced and pleaded his Majesty's most gracious pardon" before the court, who read and allowed it,³ and she was used as a witness against John Ury.

¹ Journal Proceedings in the Negro Plot, 1741, by D. Horsmanden, 58.

² Journal Negro Plot, 130.

³ Id., 155.

In the meanwhile, examinations, confessions, implications, trials and executions (burning and hanging) took place among the unfortunate negroes, Mary Burton being the standing witness against those tried. Five of the Spanish negroes sold as slaves were arraigned, and on the seventeenth of June brought to trial for counseling the negro Quack to burn the fort; Messrs. Murray, Alexander and Chambers, counsel for the prosecution, and Mary Burton the sole witness to prove the connection of the said negroes in the conspiracy. They were found guilty, though, like the others, strongly alleging their innocence.

From day to day the court adjourned, and trials and condemnations of new victims (all negroes) were had. On the nineteenth of June, the Lieutenant-Governor issued a proclamation, offering pardon to all who should confess on or before the first of July. Terrified by their condition, the negroes rushed to make confessions, so that in a week after the proclamation thirty additional slaves were accused, and before the fifteenth of July forty-six arraigned negroes pleaded guilty. Daily, before this time, suspected negroes had been arrested, until by the fourth of July the jails (the apartments in the City Hall being so called) became so crowded that disease was apprehended,¹ and a list of forty-two negroes, who had confessed their guilt, was made out by the judges to the Lieutenant-Governor for transportation.

Suspicion of Popery in connection with the conspiracy began now to pervade the community, intimations having been given that Popish priests were lurking about the city. Accordingly, John Ury, a nonjuring minister, who had lately come to New York and entered into partnership with one Campbell to teach a Greek and Latin school, was arrested, and not giving a satisfactory account of himself, was committed to jail.

On the twenty-ninth of July he was brought to trial before Chief Justice De Lancey and Justices Philipse and Horsmanden, on an indictment charging him with having counseled and abetted the negro Quack in burning the government house at the fort. A second indictment charged that he, being a Romish priest, had entered and dwelt in the Province after the time limited by a statute

¹ 1 Dunlap, 351.

of 11th William III.¹ He was, however, tried on the first indictment. The Attorney-General, assisted by Messrs. Murray, Alexander, Smith and Chambers, conducted the trial against the prisoner, who, as usual, had no counsel. Mary Burton, William Kane (a soldier from the fort who had been accused of participating in the plot, and had escaped by confessing his knowledge of it) and Sarah Hughson testified against the prisoner, who, on his part, introduced witnesses. He was found guilty, and on the twenty-ninth of August was hanged, leaving a last speech with a friend (repeating somewhat the substance at the gallows), in which, about "to appear before an awful and tremendous God," he solemnly protested his innocence of any participation in the plot.

After this the excitement very much subsided, and on the twenty-fourth of September there was kept, throughout the Province, "a day of public thanksgiving for the deliverance of his Majesty's subjects from the destruction wherewith they were so generally threatened by the late execrable conspiracy."²

On the 15th of February, 1742, however, live coals were found in the gutter of a shed adjoining a house in the city of New York, and a negro named Tom, described as a simple half-witted fellow, was arrested, and, on his own confession, convicted of the offense and hanged. Tom's confession implicated other negroes, who, in conjunction with negroes from Long Island intended, when the fire of the shed should communicate to the whole town, to murder the white inhabitants. But the public mind had now become quieted. "It seemed as if the people," says Horsmanden in his *Journal of the Plot*, under date of March 16th, 1742,³ "had almost generally composed themselves into a tranquil security, some by discrediting, others (as one would imagine) forgetting that there had been a real conspiracy."

The day before the sixteenth, a fire occurred in some tan works, and, says Horsmanden, "it seemed agreed on all hands that the fire must have been put there on purpose," yet the inquiries elic-

¹ Viz., after November, 1700; the punishment for so doing being perpetual imprisonment, and if the person, so sentenced, should escape and be retaken, the penalty being death.

² *Journal Negro Plot*, 177.

³ *Journal Negro Plot*, 189.

ited nothing to fasten the guilt on any one. On the twenty-third of the same month "a bundle of linen set on fire," was thrown in the gutter near a brew-house, and thence carried by the wind on an adjoining shed, but the examination of the matter proved fruitless.

The witness Mary Burton commenced now also to implicate as members of the plot men of known and established credit and reputation, whose characters and fortunes elevated them above all suspicion, and her veracity began at last to be questioned. "On the whole," says Horsmanden, "there was reason to conclude that this girl had at length been tampered withal."¹

On the 2d of September, 1742, the Mayor of the city issued his warrant to the treasurer for the one hundred pounds promised to the discoverer or discoverers of the plot, and the money was paid to Mary Burton.

Thus ended, after a duration of nineteen months, this wonderful delusion darkened into a most fearful tragedy.

During its continuance, one hundred and fifty-four persons were committed on account of the conspiracy. Of these twenty were white, of which four were females; also, of these were the seven Spanish negroes, one free negro, and one Indian slave; the rest were negro slaves, of which four were females. Of the whites, two, Sarah Hughson and William Kane, confessed and were pardoned, the latter enlisting in the West Indies. Ury, the Hughsons (husband and wife) and Peggy Kerry were executed; John Romme and wife discharged, the former on security for his leaving the Province, and the latter from want of evidence against her; five others (a father and four sons) were pardoned on their also leaving the Province, and the rest were discharged.

Of the Spanish and other negroes, seventy-seven confessed, of whom three were hanged; two (confessing at the stake) were burned; fifty-seven transported; thirty discharged without confession; thirteen (including the two mentioned) burned; eighteen hanged, of whom one (York), with John Hughson, was hung in chains. There were seven negroes indicted but were never found.

Ten white witnesses and nineteen negroes were examined in the course of the trials.

¹ Journal Negro Plot, 204.

Between 1691 and the Revolution, the following were the eleven Chief Justices of the Supreme Court, viz.:

Joseph Dudley,¹ William Smith,² Stephen Van Cortlandt,³ William Smith (reappointed),⁴ Abraham De Peyster,⁵ William Attwood,⁶ William Smith (reappointed),⁷ John Bridges,⁸ Roger Mompesson,⁹ Lewis Morris,¹⁰ James De Lancey,¹¹ Benjamin Pratt,¹² and Daniel Horsmanden.¹³

Of these, Dudley studied divinity in early life, then entered the political arena. Attwood, Bridges, Mompesson, Morris, De Lancey, Pratt and Horsmanden were lawyers; and Smith, Van Cortlandt and De Peyster, merchants.

During the same period, the following were the Associate or Puisne Judges, viz.: Thomas Johnson,¹⁴ William Smith,¹⁵ Stephen Van Cortlandt,¹⁶ William Pinhorne,¹⁷ Chidley Brooke,¹⁸ John Lawrence,¹⁹ Abraham De Peyster,²⁰ Robert Walters,²¹ John Bridges,²² Robert Milward,²³ Thomas Wenham,²⁴ Adolph Philipse,²⁵ James

¹ Appointed May 15, 1691.

² Appointed November 11, 1692, in room of Dudley.

³ Appointed October 30, 1700, in room of Smith.

⁴ 25th November, 1700, in room of Van Cortlandt, deceased.

⁵ Appointed January 21, 1701, in room of Smith.

⁶ Appointed August 5, 1701, in room of De Peyster.

⁷ June 9, 1702, in room of Attwood.

⁸ Appointed April 5, 1703, in room of Smith.

⁹ Appointed July 15, 1704, in room of Bridges, deceased.

¹⁰ Appointed July 1, 1718, in room of Mompesson, deceased.

¹¹ Appointed August 21, 1733, in room of Morris.

¹² Appointed November 11, 1761, in room of De Lancey, deceased.

¹³ Appointed March 16, 1763, in room of Pratt, deceased.

¹⁴ Appointed May 15, 1691, Second Judge.

¹⁵ Appointed May 15, 1691, Third Judge, and Chief Justice November 11, 1692.

¹⁶ Appointed May 15, 1691, Fourth Judge, and Chief Justice October 30, 1700.

¹⁷ Appointed May 15, 1691, Fifth Judge, and Second Judge April 3, 1693.

¹⁸ Appointed April 3, 1693.

¹⁹ Appointed April 3, 1693.

²⁰ Appointed October 4, 1698, Second Judge, in room of Johnson; Chief Justice January 21, 1701, and reappointed Second Judge August 5, 1701.

²¹ Appointed August 5, 1701, Third Judge.

²² Appointed Second Judge June 14, 1702, and Chief Justice April 5, 1703.

²³ Appointed Second Judge April 5, 1703.

²⁴ Appointed Third Judge April 5, 1703.

²⁵ Judge in 1711.

De Lancey,¹ Frederick Philipse,² Daniel Horsmanden,³ John Chambers,⁴ David Jones,⁵ William Smith, the elder,⁶ Robert R. Livingston,⁷ George D. Ludlow,⁸ and Thomas Jones.⁹

Of these, Messrs. David Jones, Chambers, Smith, the elder, Livingston, Ludlow and Thomas Jones were lawyers, and Pinhorne, Walters, Wenham, Adolph and Frederick Philipse, were merchants.

The following were the Attorney-Generals during the same period, viz.:

James Graham,¹⁰ Sampson Shelton Broughton,¹¹ May Bickley,¹² Sampson Broughton,¹³ John Rayner,¹⁴ David Jamison,¹⁵ James

¹ Appointed Second Judge June 24, 1731, and Chief Justice August 21, 1733.

² Appointed Third Judge June 24, 1731, and Second Judge August 21, 1733.

³ Appointed Third Judge January 24, 1736; removed September 22, 1747; reappointed July 28, 1753, and October 14, 1761. Appointed Second Judge March 26, 1762, and Chief Justice March 16, 1763.

⁴ Appointed Second Judge July 30, 1751; reappointed October 14, 1761; resigned November 19, 1761.

⁵ Appointed Fourth Judge November 21, 1758; reappointed October 14, 1761; appointed Third Judge March 31, 1762, and Second Judge March 16, 1763.

⁶ Appointed Third Judge March 16, 1763.

⁷ Appointed Fourth Judge March 16, 1763.

⁸ Appointed December 14, 1769.

⁹ Appointed September 29, 1773.

¹⁰ Appointed May 15, 1691.

¹¹ Appointed February 4, 1702.

¹² Appointed April 18, 1704, at decease of Broughton, and on the 7th July, 1709, reappointed to execute the duties of Attorney-General, in the absence of John Rayner.

¹³ Received letters mandatory from Queen Anne, dated 18th June, 1705, directing Lord Cornbury to constitute him Attorney-General in place of his father, Sampson Shelton Broughton, deceased. Cornbury did not comply, however, on the plea that trials were at hand in which Broughton could not be timely instructed, and it was, therefore, necessary that the officiating Attorney-General (May Bickley) should have the management of them. See *Address Lords of Trade to the Queen*, Col. Doc., vol. 5, 49. Mr. Broughton was never commissioned as Attorney-General.

¹⁴ Appointed March 24, 1708. He had leave to reside in England.

¹⁵ Appointed June 10, 1712, to execute the duties of Rayner during his absence from the Province. Mr. Jamison succeeded Bickley, and on the decease of Rayner was regularly appointed Attorney-General, January 22d, 1719.

Alexander,¹ Richard Bradley,² William Smith,³ William Kempe,⁴ John Tabor Kempe,⁵ James Duane⁶ and John Tabor Kempe (reappointed).

At the commencement of the American Revolution the court was composed of Chief Justice Horsmanden and Justices Robert R. Livingston, George D. Ludlow and Thomas Jones.

The court then suffered a disruption on account of the political sentiments of its members, Justice Livingston siding with the Colonists, while the Chief Justice and Justices Ludlow and Jones adhered to the cause of the King. The two latter retired into Westchester county, a portion of which was still under the royal jurisdiction, and continued to exercise their duties there, while the Chief Justice remained in New York, also in the occupancy of the royal adherents, performing likewise the duties of his office.⁷

Thus, although the bench became scattered, the court itself existed.

On the 28th of April, 1775, soon after the tidings of the battle of Lexington, the New York committee, of which Isaac Low was chairman, directed a letter to the several counties of the Province of New York, requesting them to elect delegates to a Provincial Congress. Consequently, on the twenty-third of May following, the first New York Provincial Congress, composed of deputies from the cities and counties of New York and Albany, the counties of Dutchess, Ulster, Orange, Suffolk, Westchester,

¹ Appointed July 28, 1721.

² Appointed March 11, 1722; reappointed October 23, 1728.

³ Appointed in room of Bradley, deceased, August 28, 1751.

⁴ Appointed November 4, 1752.

⁵ Appointed in room of William Kempe, deceased, July 30, 1759; reappointed October 30, 1761.

⁶ Appointed in 1767 to execute the duties of Attorney-General during the absence of Kempe.

⁷ Appointed May 27, 1768.

⁸ He acted as Chief Justice until his death, in September, 1778. Justice Ludlow then acted as sole judge. Ludlow continued to act as principal judge till the close of the war, when he retired to Canada. *Daly's Sketch*.

Both Ludlow and Jones, with fifty-seven others, were by an act of the New York Legislature, passed the 22d October, 1779, attainted of the offense of adhering to the enemies of the State, and their property, real and personal, was confiscated. *Jones and Varick*, 39, 40.

Kings and Richmond, assembled at the city of New York, and adjourned on the fourth of the succeeding November. A second, third and fourth Provincial Congress followed, the latter assembling at White Plains in consequence of the city of New York being in the occupancy of the British troops. The counties represented were those of New York, Albany, Orange, Suffolk, Dutchess, Westchester, Queens and Cumberland, the deputies from Charlotte county not producing any credentials.

On the fifteenth of May preceding, the Continental Congress at Philadelphia had recommended to the United Colonies, where no government suitable to the circumstances in which they were placed was established, to create by their respective conventions some form of government to meet the exigencies of the times. All the thirteen Colonies followed the advice, except Rhode Island and Connecticut, over whose internal policy the Crown had no control. The Convention of New York having, on the tenth of July (the day after the Declaration of Independence was received), changed their name from the "Provincial Congress of the Colony of New York" to the "Convention of Representatives of the State of New York," adjourned on the twenty-ninth of July, by reason of the vicinity of the enemy, to Harlem and thence to Fishkill, assembling there on the fifth September following, arming themselves for defense, should they be attacked by the British.¹ Thence, on the 19th February, 1777, they adjourned to Kingston, and on the twentieth of April succeeding, adopted (agreeably to the recommendation of the Continental Congress) the first Constitution of the State of New York. In it, the existence of a present Supreme Court was recognized, and on the 3d of May, 1777 (ten days before the final adjournment), the Convention elected John Jay Chief Justice, and Robert Yates and John Morin Scott Associate Justices. The latter, however, declined acceptance of the office, and John Sloss Hobart, who received the next number of votes, was declared elected to it. Robert R. Livingston was at the same time elected Chancellor, and Egbert Benson, Attorney-General.

¹ Journal Provincial Congress, vol. 1, 600-609; B. F. Butler's Discourse before New York Historical Society, 1847.

Fifteen persons were, on the same day, elected to compose a Council of Safety to carry on a temporary government until the Constitution could be put in operation.

On the eighth following, a plan of government was reported in which were the names of the above members of the Supreme Court, as were those of the Chancellor and Attorney-General, and was adopted by the Convention. The plan also provided for the election of a Governor, Lieutenant-Governor, a Senate and Assembly. In consequence of the Southern District being occupied by the British troops, precluding an election, Senators from thence, and Assemblymen from the counties composing said district (except Westchester county) were also named in the plan, as well as the judges, sheriffs and clerks of the various counties of the State, in addition to the officials first named, for the immediate execution of the laws, the distribution of justice and holding the contemplated elections.¹

The Convention dissolved on the thirteenth of May, and on the fourteenth the Council of Safety went into operation. On the twentieth, a commission for holding Courts of Oyer and Terminer and General Gaol Delivery in the State, drafted by Chief Justice Jay, was issued by the Council.² On the fifth of June following, the Council directed that until the Legislature should otherwise provide, the Supreme Court should sit at Kingston, and that the terms be the same as throughout 1774.³ These terms were the same as provided for in the ordinance of 1760. The seal of the Supreme Court was likewise ordered to be delivered to the Council.

During the ensuing summer, the elections were held under the auspices of the Council of Safety. George Clinton was elected both Governor and Lieutenant-Governor. He accepted the former office, and Pierre Van Cortlandt, the President of the Council of Safety, was chosen to the latter.

The summer was threatening to the American cause. Burgoyne was advancing along the northern frontier of the State, with an army of between seven and eight thousand men. His Colonel, St. Leger, was investing the American post, Fort Stanwix,

¹ Journal Provincial Congress, vol. 1, 917, 918. ² Jour. Council Safety, 957.

³ Journal Council Safety, 948.

at the head of the Mohawk valley, and the enemy were preparing an invasion up the Hudson from the city of New York. To darken the aspect of affairs, certain parts of Albany, Charlotte, Cumberland and Gloucester counties, by a Convention which met in June, declared, under the name of the State of Vermont, independence of the State of New York.

These counties had been represented in the New York Provincial Convention, and had been included in the Constitution of April.¹

Consequently, the Legislature, which was appointed by the Council of Safety to meet on the first of August,² was prorogued to the first of September, at Kingston. It did not, however, assemble until the tenth, owing to a portion of its members being detained by their military duties in the field.³

On the ninth at the same place, the first term of the Supreme Court under the Constitution was held, and Chief Justice Jay delivered the first charge to the grand jury.⁴

In 1778, the judges of the Supreme Court were empowered to devise a seal, and it was directed that all proceedings of the court should be before the people of the State, instead of, as heretofore, before the King.

In October, 1779, Richard Morris was appointed Chief Justice in the place of John Jay, the latter having been appointed minister to the Court of Spain.

In 1784 (18th May), the first grand jury of the court of Oyer and Terminer, after the Revolution, sat in the city of New York, and James Duane, Mayor of the city, associated with Judge Hobart in the Oyer and Terminer commission, delivered the charge.⁴

In 1785, the terms of the Supreme Court were directed to be held at Albany on the last Tuesday of July and third Tuesday in October, and at the city of New York the third Tuesday of January and April in every year, the April and October terms to continue for three weeks, and the January and July terms for two. Also, that the office of the clerk of the court should be held in the city of New York, and that of a deputy, to be appointed by

¹ Kent's Discourse before the New York Historical Society, 1828.

² Butler's Discourse before the New York Historical Society, 1847.

³ Jay's Life, by Jay.

⁴ Life of Duane, by Samuel W. Jones. 4 *Doc. Hist.*, p. 1078.

him, in Albany, and all the papers and records filed in the office of the deputy, to be removed once in every six months to the clerk's office in New York.

In 1792 (December 24th), Morgan Lewis was appointed a Third, and in 1794 (January 29th), Egbert Benson a Fourth Associate Justice by the Council of Appointment. The bench was thus erected into the same number of judges it possessed at the creation of the court by the act of 1691.

At the April term of the Supreme Court in 1796, the first rules of the court under the Constitution, drawn by Judge Benson, were introduced, and were the foundation of all the subsequent rules of said court.

In these rules it was required that any person admitted to practice as an attorney of the court, should previously serve a clerkship of seven years with a practicing attorney, deducting, however, the time passed in classical studies after the age of fourteen, not exceeding four years; and that every person admitted and practicing as an attorney of the court for four (altered at November term, 1804, to three) years, should be admitted to practice also as counsel. Both attorneys and counsel passed an examination as to their qualifications, by lawyers appointed by the court, previous to their admission to practice.

On the 10th of February, 1797, it was enacted that the judges of the court should designate, in April term of every year, one of their number to hold Circuit Courts in the western, one in the eastern, one in the middle and one in the southern districts of the State.

On the following tenth of March, the judges were authorized to appoint an additional clerk to keep his office in the city of Albany; and the justices were empowered to direct from time to time such records and papers as they should think proper, to be removed from the clerk's office, in the city of New York, and deposited in the office in the city of Albany. The said justices were likewise required to cause an additional seal of the Supreme Court to be prepared.

On the 6th of February, 1798, James Kent was appointed a justice of the court. He introduced the practice, subsequently followed by the members of the court, of presenting written

opinions in all matters decided, of importance sufficient to become a precedent.

In 1804 (April 7th), the justices were empowered, time, to appoint, by license, under the hand and seal of the court, during pleasure, a reporter, with a salary of \$850 per annum, to report the decisions of the said court, as well as the Court for the Correction of Errors, and publish the same. Under this authority George Caines was appointed the first reporter.¹

On the 4th of April, 1807, the judges were authorized in their discretion to establish an additional clerk's office in the town of Whitestown, Oneida county, to appoint a clerk, and prepare an additional seal. Accordingly, a clerk was appointed to keep his office at Utica.

It was made the duty of the clerks to deliver each to the other, on or before the last day of every term, at the place where the court should then be held, a transcript of the docket of all judgments that had been docketed in his office during the preceding term and vacation.

After the 30th March, 1811, the terms of the court were held on the 3d Monday in October, the 1st Mondays in January, May and August, and continued thence every day except Sunday, until and including Saturday in the next ensuing week. The May and October terms were held in the city of New York, and the January and August terms in Albany.

As regards the salaries of the judges, on the 4th of April, 1778, it was enacted that the salary of the Chief Justice should be £300 (\$750 New York currency) per annum; and the Associate Justices £200 (\$500 New York currency) per annum. In addition to the salaries of the Associate Justices, they were allowed 40 shillings per day, for attendance on the Court of Oyer and Terminer, and travel fees.

From this time, the Legislature annually (generally in the supply bill) and gradually increased the above salaries until, in 1797, the salaries of the Chief Justice and Associate Justices were respectively \$2,000 per annum.

On the 19th of June, 1812, it was enacted that, annually, three thousand dollars should be paid them, respectively, for three years.

¹ 1 Revised Laws, 320.

On the 17th of April, 1816, the sum was increased by law to \$4,500 annually, without any limit as to time.

On the 20th April, 1818, it was enacted that the Judges of the Supreme Court residing in the city of New York should be entitled to receive fees for chamber business in the said court, and for other services appertaining to their office in the same manner as any other officer might do for the like services.

In 1820, the salaries of the judges were reduced to \$3,500 each per annum. The next year (April third) they were reduced to \$3,000 each, which sum was continued until the Constitution of 1821.

There were several compilations of the laws between 1774 and 1821. Pursuant to a law passed the 15th of April, 1786, Samuel Jones and Richard Varick published, on the 25th November, 1789, an edition of the acts from the first session of the Legislature, held at Poughkeepsie, in 1778, to the twelfth session, in 1789. The first act passed in the State, was passed on the 4th of February, 1778.

In February, 1798, Thomas Greenleaf published an edition of the Revised Laws of the State from the first session of the Legislature to the twentieth (1797), in three volumes.

On the 8th of April, 1801, an act was passed, authorizing James Kent and Jacob Radcliff, to revise the laws of the State, and accordingly, in 1802, they published an edition of the acts from the sixth session, in 1783, to the twenty-fourth session, in 1801.

From the twenty-fourth session, C. R. and G. Webster, and E. W. Skinner, published the laws up to the thirty-fifth session, in 1812, embracing, also, the Revised Laws, by Kent and Radcliff. This publication extended to six volumes, the Revised Laws forming the first two volumes.

On the 4th of April, 1811, an act was passed, authorizing William P. Van Ness and John Woodworth, to revise the laws of the State; and, accordingly, they published an edition of the laws, in two volumes, known as the Revised Laws of 1813.

The Constitution of 1777 declared, in its twenty-fourth and twenty-fifth sections, that the Judges of the Supreme Court should hold their offices during good behavior, or until they attained the age of sixty. This latter provision was inserted in consequence,

it is said, of Daniel Horsmanden having been continued in office as Chief Justice, notwithstanding his advanced age and growing infirmities.

The Constitution also declared that the judges should not hold any other office excepting that of delegate to the General Congress, on special occasions. If, however, they should be appointed or elected to any other office, except as before mentioned, it should be at their option in which to serve.

This provision carried out a resolution of the General Assembly, adopted unanimously May 17, 1769, that no Judge of the Supreme Court should in future have a seat as a Member of that body.

Consequently, in the following November, Robert R. Livingston (father of the Chancellor), then one of the Supreme Court Justices, and who held a seat in the General Assembly, was declared disqualified. In the succeeding December, he was reelected and again voted disqualified. In 1770 he was once more elected, and on the 25th January, 1771, again ousted. In 1772 he was excluded for the fourth time, after which he relinquished the contest.

Between 1777 and 1821, the following were the Chief Justices, viz.:

John Jay,¹ Richard Morris,² Robert Yates,³ John Lansing, Jr.,⁴ Morgan Lewis,⁵ James Kent,⁶ Smith Thompson,⁷ and Ambrose Spencer.⁸

Between the same periods, the following were the Associate Justices, viz.:

¹ Appointed by Convention of Representatives, May 8, 1777, and commissioned by Council of Appointment, October 17, 1777.

² Appointed by Council of Appointment, October 23, 1779, in place of Jay, appointed Minister to Spain.

³ Appointed September 28, 1790, in place of Morris, resigned, having attained the age of sixty.

⁴ Appointed February 15, 1798, in place of Yates, resigned, having arrived at the age of sixty.

⁵ Appointed October 28, 1801, in place of Lansing, appointed Chancellor.

⁶ Appointed July 2, 1804, in place of Lewis, elected Governor.

⁷ Appointed February 23, 1814, in place of Kent, appointed Chancellor.

⁸ Appointed February 9, 1819, in place of Thompson, resigned.

Robert Yates,¹ John Sloss Hobart,² John Lansing, Jr.,³ Morgan Lewis,⁴ Egbert Benson,⁵ James Kent,⁶ John Cozine,⁷ Jacob Radcliff,⁸ Brockholst Livingston,⁹ Smith Thompson,¹⁰ Ambrose Spencer,¹¹ Daniel D. Tompkins,¹² William W. Van Ness,¹³ Joseph C. Yates,¹⁴ Jonas Platt,¹⁵ John Woodworth.¹⁶

During the same period, the following were the Attorney-Generals.

Egbert Benson,¹⁷ Richard Varick,¹⁸ Aaron Burr,¹⁹ Morgan Lewis,²⁰ Nathaniel Lawrence,²¹ Josiah Ogden Hoffman,²² Ambrose Spencer,²³ John Woodworth,²⁴ Matthias B. Hildreth,²⁵ Abraham Van Vechten,²⁶

¹ Appointed by Convention of Representatives, May 8, 1777, and commissioned by Council of Appointment, October 17, 1777.

² Appointed by Convention of Representatives, May 8, 1777, and commissioned by Council of Appointment, October 17, 1777.

³ Appointed September 28, 1790, in place of Yates, appointed Chief Justice.

⁴ Appointed December 24, 1792, Third Associate Justice.

⁵ Appointed January 29, 1794, Fourth Associate Justice.

⁶ Appointed February 6, 1798, in place of Lansing, appointed Chief Justice.

⁷ Appointed August 9, 1798, in place of Hobart, resigned, having arrived at the age of sixty.

⁸ Appointed December 27, 1798, in place of Cozine, deceased.

⁹ Appointed January 8, 1802, in place of Lewis, appointed Chief Justice.

¹⁰ Appointed January 8, 1802, in place of Benson, appointed Judge of United States District Court.

¹¹ Appointed February 3, 1804, in place of Radcliff, resigned.

¹² Appointed July 2, 1804, in place of Kent, appointed Chief Justice.

¹³ Appointed June 9, 1807, in place of Tompkins, elected Governor.

¹⁴ Appointed February 8, 1808, in place of Livingston, appointed a Justice of United States Supreme Court.

¹⁵ Appointed February 23, 1814, in place of Thompson, appointed Chief Justice.

¹⁶ Appointed March 27, 1819, in place of Spencer, appointed Chief Justice.

¹⁷ Appointed by Convention of Representatives, May 8, 1777, and commissioned by Council of Apportionment, January 15, 1778.

¹⁸ Appointed May 14, 1789.

¹⁹ Appointed September 29, 1789.

²⁰ Appointed November 8, 1791.

²¹ Appointed December 24, 1792.

²² Appointed November 13, 1795.

²³ Appointed February 3, 1802.

²⁴ Appointed February 3, 1804.

²⁵ Appointed March 18, 1808, reappointed February 1, 1811.

²⁶ Appointed February 2, 1810, reappointed February 13, 1813.

Thomas Addis Emmett,¹ Martin Van Buren,² Thomas J. Oakley,³ Samuel A. Talcott.⁴

The Constitution of 1821 made an organic change in the Supreme Court. It reduced the number of judges to a Chief Justice and two Associate Justices. They sat four times a year, in review of decisions made at the Circuit and for the determination of questions of law. In 1823 it was directed that the terms of the court be on the third Mondays of February and October, and first Mondays of May and August; the May term to be in the city of New York, the August term at Utica, and February and October terms at Albany; the several terms to continue from the commencement, every day, except Sunday, until and including the fourth Saturday; no process, however, to be tested or made returnable in the third or fourth week. All records and proceedings were, as heretofore, to be before the justices of the people of the Supreme Court of Judicature of the same people.

These terms were subsequently altered as follows, viz.: On the first Mondays of January, May and July, and third Monday of October; the January and October terms in each year to be at the Capitol, in the city of Albany, the May term at the City Hall, in the city of New York, and the July term at the Academy, in the city of Utica. These terms were continued from the commencement, until and including the fifth Saturday, but no argument was to be heard during the fifth week, unless by the consent of parties or their counsel; and each term, so far as respected the issuing, teste and return of process, except subpoenas, attachments and writs of *habeas corpus*, ended on the second Saturday after the commencement.

In 1841 the October terms were changed from Albany to Rochester, and the clerk, residing at Geneva, was directed to reside at that place.

It was also required that some or one of the justices should sit at the Capitol, in Albany, to decide such non-enumerated business as should arise in said court, except such as the said justices should by rule direct to be heard in term time.

All process was to be tested in the name of the Chief Justice, or if there be none, in that of any justice of the court.

¹ Appointed August 12, 1812.

³ Appointed July 8, 1819.

² Appointed February 17, 1815.

⁴ Appointed February 12, 1821.

The court had power from time to time, by general rules, to establish, modify, alter and amend its practice in cases not provided for by statute, and were directed every seven years to revise said rules with regard to the abolishment of fictitious and unnecessary process and proceedings; the simplifying of pleadings and proceedings; expediting the decision of causes; the diminishing of costs and the remedying of abuses and imperfections in the practice.

The judges of the Supreme Court were appointed by the Governor, with the advice of the Senate, in consequence of the Council of Appointment having been abolished by the Constitution of 1821. They held their offices during good behavior, or until they attained the age of sixty, and could be removed by joint resolution of the Legislature, concurred in by two-thirds of the Assembly and a majority of the Senate. They could hold no other office, were exempted from military duty, could receive no fees or perquisites of office, could not sit as judges in causes in which they were parties, or interested by consanguinity or affinity, or any other way, or in any appellate court decide or take part in the decision of any matter decided by them in any other court, or practice as attorneys or counselors in any court of which they were judges, except in suits in which they were parties or interested, or have a partner practicing in a court of which they were judges, or be interested directly or indirectly in the costs of any suit in any court of which they were judges, except where they were parties or interested.

The judges were likewise made members of the Court for the Trial of Impeachments and the Correction of Errors.

In addition to the offices of clerks of the court held in the cities of New York, Albany and Utica, an office in 1829 was established and a clerk appointed at Canandaigua. In 1830 the clerk was directed to remove his office to Geneva, where, in 1831, he was established until 1841.

There was a seal of the court in the keeping of each of the said clerks.

The clerks were appointed by the justices of the court, and held their offices for three years, unless sooner removed by those appointing them.

Each clerk was directed to appoint a deputy, who should perform the duties of the clerk during the absence or inability of the latter, or in case a vacancy occurred in his office.

The justices were empowered to direct, from time to time, the removal of any papers in a cause from one clerk's office to another.

The reporter of the court, who was also the reporter of the Court for the Trial of Impeachments and the Correction of Errors, and called the State Reporter, was appointed by the Lieutenant-Governor, the Chancellor and Chief Justice of the Supreme Court, and held his office during their pleasure. He was required to be, at the time of his appointment, a counselor at law or in chancery, of at least five years standing.

From 1823, the annual salary of the judges was \$2,000 each. In 1835 it was raised by act to \$2,500 per annum each, which amount, in 1839, was increased permanently to \$3,000. The act of 1835 abolished the compensation to the judges for travel and attendance as members of the Court of Errors.

For the trial of issues joined in the Supreme Court, eight Circuit Judges were appointed, one from each of the eight Circuit Districts into which the State was divided, corresponding with the eight Senate Districts.

Each of these Circuit Judges possessed the powers of a justice of the Supreme Court at chambers.

Two Circuit Courts, at least, were held in each year, in every county of the State separately organized, except in the city and county of New York, where there were four.

Each Circuit Judge appointed the times and places of holding the Circuit Courts, within his circuit, for the period of two years; and the said courts were held as many days as the judge holding the same deemed necessary.

The said Circuit Courts had power to try all such issues, and take all such inquests by default or otherwise, as were to be tried or taken in the said courts; to record all nonsuits and defaults before them, and to return all proceedings had before them into the Supreme Court, or the court directing the same.

Each justice of the Supreme Court as well as the Circuit Judges, had power to hold any Circuit Court, either for the

whole time for which such court should continue or for any part of that time.

The clerks of the several counties were the clerks of the Circuit Courts, except in the city and county of New York, where the clerk of the Supreme Court was the clerk of the Circuit Court.

A Court of Oyer and Terminer, and General Gaol Delivery was also organized under the authority of the Constitution.

Two courts at least of this description were directed to be held in each year, in each of the counties of this State, separately organized, except in the city and county of New York, where four at least were directed.

The Circuit Judges were the presiding judges of the above court, when held by them.

Each judge appointed the times and places of holding these courts, within his circuit, which might be held at the times and places where the Circuit Courts were appointed to be held.

They were held, in the city and county of New York, by one or more of the Justices of the Supreme Court, or of the Circuit Judges, or by the first Judge of the Court of Common Pleas of the said city and county, together with the Mayor, Recorder and Aldermen of that city, or with any two of them.

In all the other counties of the State they were held by a Justice of the Supreme Court, or a Circuit Judge, together with at least two of the Judges of the County Courts of the county.

In four counties of the State (Albany, Columbia, Rensselaer, and Schenectady), the Mayor, Recorder and Aldermen (in the latter county, the Mayor and Aldermen), or any two of them, might sit and act in the Court of Oyer and Terminer with or instead of the County Judges.

Every Court of Oyer and Terminer had power to inquire, by a grand jury of the same county, of all crimes and misdemeanors committed or triable in such county; to hear and determine all such crimes and misdemeanors, and deliver the jails of the said county, according to law, of all prisoners therein; to try all indictments found in the Court of General Sessions of the Peace of the same county, which had been sent, by order of that court, to and received by the said Court of Oyer and Terminer, or which had been removed into the latter court; and which were proper, in

its opinion, to be there tried. The said court could send all indictments found at any such court, for offenses triable at the Court of General Sessions of the same county, to the latter court for trial.

Each Justice of the Supreme Court, and each of the Circuit Judges, had power to preside in any Court of Oyer and Terminer in this State, either for the whole time such court should continue or for any part of that time.

The Governor, with the consent of the Senate, was authorized to issue commissions of Oyer and Terminer and Gaol Delivery as often as occasion should require. One of the Supreme Court Justices or Circuit Judges was always to be named, in the said commission, and no proceedings could be had upon any such commission without the presence of such justice or judge. Every such commission specified the time and place where the court was to be held, and was recorded in the Secretary of State's office, and a copy was sent by said secretary to the district attorney of the county for which such commission was issued.

A special Court of Oyer and Terminer for any county could also be appointed by the judge of the circuit in which the county was situated, by warrant, under his hand and seal, whenever the number of prisoners confined in the jail of any county, or the importance of the offenses charged upon such prisoners, rendered the said court necessary.

The judge transmitted the said warrant to the district attorney of the county, who, twenty days at least before the holding of said court, was required to issue a precept, directed to the sheriff of the county, requiring him to summon grand and petit jurors; bring before the court all prisoners in the county jail, and publish a proclamation, notifying all persons bound to appear at said court to appear thereat; and requiring all officers to return all their recognizances, inquisitions and examinations to the said court on its opening.

Every Court of Oyer and Terminer possessed a seal, and all process issuing thence was tested in the name of the Circuit Judge of the circuit; or in case of a vacancy in his office, in the name of the Chief Justice of the Supreme Court.

The said Court of Oyer and Terminer, could direct its writs into any county in the State as occasion required.

The county clerk was also the clerk of the above court, except in the city and county of New York, where the clerk of the General Sessions officiated.

In 1827, the salaries of the Circuit Judges were \$1,250 per year.

In 1835, these salaries were increased to \$1,600.

Attorneys and counselors were admitted to practice on the same terms as prescribed by the rules of 1796.

Between 1821 to and including 1846, the following were the Chief Justices, viz.:

John Savage,¹ Samuel Nelson,² Greene C. Bronson³ and Samuel Beardsley.⁴

During the same period the following were the Associate Justices, viz.:

John Woodworth,⁵ Jacob Sutherland,⁶ William L. Marcy,⁷ Samuel Nelson,⁸ Greene C. Bronson,⁹ Esek Cowen,¹⁰ Samuel Beardsley,¹¹ Freeborn G. Jewett,¹² Frederick Whittlesey,¹³ Thomas McKissock.¹⁴

During the same period the following were the Circuit Judges:

1st Circuit, Ogden Edwards,¹⁵ Wm. Kent,¹⁶ John W. Edmonds.¹⁷

2d Circuit, Samuel R. Betts,¹⁸ James Emott,¹⁹ Charles H. Ruggles,²⁰ Selah B. Strong,²¹ Seward Barculo.²²

¹ Appointed by Governor and Senate January 29, 1823.

² Appointed by Governor and Senate August 31, 1837.

³ Appointed by Governor and Senate March 5, 1845.

⁴ Appointed by Governor and Senate June 29, 1847.

⁵ Appointed by Governor and Senate February 7, 1823.

⁶ Appointed by Governor and Senate January 29, 1823.

⁷ Appointed by Governor and Senate January 21, 1829.

⁸ Appointed by Governor and Senate February 1, 1831, in place of Marcy.

⁹ Appointed by Governor and Senate January 6, 1836, in place of Sutherland.

¹⁰ Appointed by Governor and Senate August 31, 1836, in place of Nelson.

¹¹ Appointed by Governor and Senate February 20, 1844, in place of Cowen.

¹² Appointed by Governor and Senate March 5, 1845, in place of Bronson, appointed Chief Justice.

¹³ Appointed by Governor and Senate June 30, 1847, in place of Jewett.

¹⁴ Appointed by Governor and Senate July 1, 1847, in place of Beardsley, appointed Chief Justice.

¹⁵ Appointed April 21, 1823.

¹⁹ Appointed February 21, 1827.

¹⁶ Appointed August 21, 1841.

²⁰ Appointed March 9, 1831.

¹⁷ Appointed February 18, 1845.

²¹ Appointed March 27, 1846.

¹⁸ Appointed April 21, 1823.

²² Appointed April 4, 1846.

3d Circuit, William A. Duer,¹ James Vanderpoel,² John P. Cushman,³ Amasa J. Parker.⁴

4th Circuit, Reuben H. Walworth,⁵ Esek Cowen,⁶ John Willard.⁷

5th Circuit, Nathan Williams,⁸ Samuel Beardsley,⁹ Hiram Denio,¹⁰ Isaac H. Bronson,¹¹ Philo Gridley.¹²

6th Circuit, Samuel Nelson,¹³ Robert Monell,¹⁴ Hiram Gray.¹⁵

7th Circuit, Enos T. Throop,¹⁶ Daniel Moseley,¹⁷ Bowen Whiting.¹⁸

8th Circuit, William B. Rochester,¹⁹ Albert H. Tracy,²⁰ John Birdsall,²¹ Addison Gardner,²² John B. Skinner,²³ Nathan Dayton.²⁴

During the same period the following were the Attorney-Generals, viz.:

Samuel A. Talcott,²⁵ Greene C. Bronson,²⁶ Samuel Beardsley,²⁷ Willis Hall,²⁸ George P. Barker²⁹ and John Van Buren.³⁰

In the summer of 1846, the Convention met which framed the present Constitution of our State.

By it the Supreme Court, as it then existed, was abolished, and the present one, having general jurisdiction in law and equity, erected.

The State is divided into eight judicial districts, of which the city of New York is one. Four justices of the Supreme Court are elected in each district, except the first, in which five are elected; the term of office of each being eight years, removable by concurrent resolution of the Legislature; two-thirds of the Assembly and a majority of the Senate assenting to said resolution. They can hold no other office or public trust.

¹ Appointed April 21, 1823.

² Appointed January 12, 1830.

³ Appointed February 9, 1838.

⁴ Appointed March 6, 1844.

⁵ Appointed April 21, 1823.

⁶ Appointed April 22, 1828.

⁷ Appointed September 3, 1836.

⁸ Appointed April 21, 1823.

⁹ Appointed April 12, 1834.

¹⁰ Appointed May 7, 1834.

¹¹ Appointed April 18, 1838.

¹² Appointed July 17, 1838.

¹³ Appointed April 21, 1823.

¹⁴ Appointed February 11, 1831.

¹⁵ Appointed January 13, 1846.

¹⁶ Appointed April 21, 1823.

¹⁷ Appointed January 16, 1829.

¹⁸ Appointed April 7, 1844.

¹⁹ Appointed April 21, 1823.

²⁰ Appointed March 26, 1826.

²¹ Appointed April 18, 1826.

²² Appointed September 29, 1829.

²³ Appointed February 9, 1838.

²⁴ Appointed February 23, 1838.

²⁵ Reappointed by the Legislature February 8, 1823.

²⁶ Appointed February 27, 1829.

²⁷ Appointed January 12, 1836.

²⁸ Appointed February 4, 1839.

²⁹ Appointed February 7, 1842.

³⁰ Appointed February 3, 1845.

Four justices are annually selected to serve in the Court of Appeals, from the class of justices having the shortest time to serve, and serve for one year; they are taken alternately, first from the first, third, fifth and seventh, and then from the second, fourth, sixth and eighth judicial districts.

The justice of the Supreme Court in each judicial district having the shortest time to serve, and who is not a member of the Court of Appeals, becomes the Presiding Justice of said Supreme Court; and in case of his inability to hold any general term appointed to be held by him, any three justices convened to hold said term may designate one of their number to preside.

These thirty-two justices are so classified that in each district the term of one justice expires every two years.

The said justices possess the powers and exercise the jurisdiction possessed and exercised by the justices of the preceding Supreme Court, and of the late Chancellor, Vice-Chancellors and Circuit Judges, so far as the powers and jurisdiction of the said officers were consistent with the Constitution of 1846, and the provisions of the act in relation to the judiciary, passed May 12, 1847.

Four general terms of the Supreme Court for the determination of questions of law, are held annually in each judicial district. The justices of each district are empowered to appoint as many more terms as they may think proper, at the times and places appointed by a majority of them.

Two terms, at least, of the Circuit Court and Court of Oyer and Terminer are held annually in each of the counties of the State, and as many more thereof, and as many special terms as the justices of each judicial district shall appoint therein; but at least one special term is required to be held annually in each of said counties, Fulton and Hamilton being considered one county.

The Circuit Courts and Courts of Oyer and Terminer are required to be held at the same places and to commence on the same day.

The justices appoint the times and places of holding the terms, general and special, of the Supreme Court, those of the Circuit Courts and Courts of Oyer and Terminer, which appointment continues for two years.

The Governor, Secretary of State and Comptroller are directed also, whenever the Supreme Court omit to appoint in any county as many general and special terms of said court, or as many terms of the Circuit Court or Court of Oyer and Terminer as the law requires for any year, to appoint the deficient terms, and assign some justice or justices of the said Supreme Court to preside at or hold said terms. The above officials are also required to appoint terms of the said courts in any county, in addition to those appointed by the Supreme Court, whenever, in their opinion, the public interests or those of suitors require the same, and to designate the justice or justices as above. The Governor, alone, is also required to designate some justice or justices of the Supreme Court to hold the terms above specified whenever they are in danger of failing.

The concurrence of a majority of the justices holding a general term is necessary for a judgment. If a majority do not concur, the case is reheard.

The clerks of the several counties of the State are clerks of the Supreme Court. The clerk of the Court of Appeals is, ex-officio, also a clerk of this court.

The salaries of the justices were at first \$2,500 each, per annum. They have since been increased to \$3,500.

Every male citizen applying to be admitted as attorney, solicitor and counselor in the courts of the State, is to be examined by the Justices of the Supreme Court, at a general term thereof, and if the applicant is of good moral character, and of requisite qualifications, the court, by order entered by the clerk, admits him to practice. No term of clerkship or period of study is required for such admission.

The said court can suspend or remove any counselor, solicitor or attorney for deceit, malpractice or misdemeanor, but only upon charges and opportunity given for defense.

In 1829, the statutes were revised by John C. Spencer, B. F. Butler and John Duer. Four later editions have been published, viz., in 1836, 1846-48, 1852 and 1859.

In 1848 (April 12th), the Legislature adopted a "Code of Procedure" to simplify and abridge the Practice, Pleadings and Proceedings of the Courts of the State; prepared by A. Loomis, David Dudley Field and David Graham.

As a branch of the Supreme Court, we will now consider the Court of Exchequer. This court was erected, by Governor Dongan, in December, 1685, and was held by himself and council on the first Monday of every month, to hear matters between the Crown and Colonies relative to lands, rents and revenues.

The Supreme Court, organized under the act of 1691, had cognizance of matters in exchequer the same as the Court of Exchequer, in England.¹ These matters were heard at the regular terms of the court; but accumulated to such an extent as to preclude their adjudication as amply as was desired at those terms. Consequently, by order of Lieut.-Gov. Nanfan and Council, in April, 1702, separate terms of the Supreme Court were held for their determination.

Shortly afterward, these terms were discontinued, and there appear to have been no exchequer proceedings until 1733. In that year the Attorney-General of the Province, Richard Bradley, filed a bill in the Supreme Court as a Court of Exchequer, in behalf of Governor Cosby, against Rip Van Dam, for half the amount of the salary received by the latter, as acting Governor, between the death of Governor Montgomery and the arrival of Cosby. Van Dam, in his turn, endeavored to sustain an action at common law against Cosby for half the emoluments and perquisites of the office received by the latter while continuing in England, but after filing his declaration in the Supreme Court, he was compelled to defend himself against the former suit. He retained Messrs. Alexander and Smith, who excepted to the jurisdiction of the Court especially in matters of equity. The exception was overruled by Judges De Lancey and Philipse, against the written opinion of Chief Justice Lewis Morris. The latter was removed by Cosby, and De Lancey appointed in his place. The institution of the suit had renewed the old feeling of opposition to an Equity Court, and the overruling of the plea and removal of Morris raised that feeling to the highest degree of excitement. Two parties sprang up, one being "the people of figure," siding with the Governor, and in favor of the equity jurisdiction of the court; the other, with Van Dam (who acted as their leader), against said

¹ It consists of two divisions: the receipt of the exchequer which manages the royal revenue; and the court or judicial part of it, which is again divided in to a Court of Equity and a Court of Common Law.

jurisdiction, and composing the democracy. Petitions were presented to the General Assembly for the repeal of the exchequer branch of the Supreme Court, and for a reëstablishment of all the courts by a law emanating from that body.

Two distinguished lawyers, Messrs. Smith and Murray, argued the above points, the former for and the latter against, before the Assembly; which, however, came to no decision.

The New York Weekly Journal, published by John Peter Zenger, a Palatine,¹ sided with the Van Dam party, while the New York Gazette, published by William Bradford, advocated the cause of the Governor and his adherents.

The people were generally on the side of Van Dam; and so great was the excitement that the ringing of the Exchequer Court bell produced the greatest confusion in the city.²

At length an information was filed of the term of January, 1735, in the Supreme Court by Attorney-General Bradley, against Zenger (four numbers of Zenger's Journal with two printed ballads reflecting upon the Government having, by order of the Governor and Council, in November, 1734, been burned by the common hangman, and he imprisoned) for publishing in his Journal two articles reflecting upon the Governor and "Ministers and officers of the King" in the Province.³ William Smith and James Alexander, volunteers in Zenger's cause and the supposed authors of the libels,⁴ defended him, but excepting to the authority of the court composed of Chief Justice De Lancey and Frederick Philipse, second Judge, were stricken from the roll of attorneys of the court by De Lancey. Andrew Hamilton, a Quaker lawyer of Philadelphia, of learning, and although four-score, celebrated for his eloquence, appeared then, in connection with John Chambers, for Zenger, whose trial came on the fourth of August in the above year. Hamilton set up the truth of the libel as a defense, and when evidence to that effect was excluded by the court on the ground that the truth constituted no defense, appealed to the jury, contending they were judges of the law as well as the

¹ New York Documentary History, 3, 340.

² Smith (Carey's ed.), 266.

³ Tryal of John Peter Zenger, p. 10.

⁴ Memoir of C. J. De Lancey, by Edward F. De Lancey. 4 *Doc. Hist.*, 1042.

fact. The jury brought in a verdict of acquittal. "The instant the verdict was known," says Smith, "the impetuous acclamation shouted by the audience shook the hall, and a mixture of amazement, terror and wrath appeared in the bench." Hamilton was conducted from the hall to a splendid entertainment, and presented with the freedom of the city in a gold box, by the corporation.

No proceedings were had on the exchequer side of the Supreme Court after those of Van Dam, until 1786, when in February of that year an act passed providing that the junior justice, or in his absence one other of the puisne judges, should hold a Court of Exchequer during the whole or part of every term, near the sittings of the said court. The Supreme Court Justices were authorized to appoint a clerk, and prepare a seal for the said Court of Exchequer. On the 30th July, 1786, William Popham was appointed clerk and so continued until 1830.¹

On the 3d of April, 1803, the law authorizing the above court was with some alterations reënacted.²

On the 1st of January, 1830, the court was abolished pursuant to the general repealing act passed December 10, 1828. The Comptroller thereafter exercised the duties which had devolved on this court.³

ADMIRALTY JURISDICTION in the Colony of New York, was as follows:

It extended to the decision of all maritime causes, the proceedings of the court being the same as in the High Court of Admiralty in England.

Trials were held by the court as to whether the captures taken in hostilities between Great Britain and any other power were lawful prizes.

It heard cases of penalties and forfeitures incurred by the breach of any Parliamentary act relating to the trade and revenues of the Colony. Its jurisdiction in these matters was concurrent with that of the Courts of Record, the informer or prosecutor proceeding at his election, for the recovery of those penalties or forfeitures,

¹ Hough's Civil List, 345.

² Jones and Varick, Laws 1786, 240.

³ Hough's Civil List, 345.

either in the Court of Record or Admiralty, where the offense was committed.¹

The first regular Court of Admiralty in the Province of New York was established by Governor Fletcher, who was empowered so to do by a warrant from the Lords of the Admiralty in England.²

Admiralty proceedings, however, were known in the Province at an earlier period. The Court of the Schout, Burgomasters and Schepens in 1653 (during the time of Governor Stuyvesant) had authority to try admiralty cases.

Knowledge of maritime law was familiar to the Dutch from the institutions appertaining to the subject existing in the mother country. Commercial Holland possessed, as early as the sixteenth century, five admiralty colleges established respectively at Rotterdam, Amsterdam, Middleburg in Zealand, Hoorn in North Holland, and Harlington in Friesland.³

In the time of Andros, in 1678, admiralty cases were tried in the Mayor's Court, composed of the Mayor and Aldermen of the city of New York, under the charter granted by him in 1675, and also under special commissions which he issued. But he erected no regular court,* although authorized by King James so to do. Governor Dongan was also authorized by the Crown, in 1682, to institute a Court of Admiralty, but he went no further than the appointment of a judge, who heard several cases.

While Leisler had possession of the government he, on the 17th of September, 1690, issued a commission appointing Peter De Lanoy, Judge of a Court of Admiralty, together with eight associates (they, or any six of them, of which Lanoy was always to be one, to compose the court), on account of several vessels belonging to France (then in hostilities against England) having been brought

¹ Stoke's View of the Constitution of the British Colonies, p. 270.

² Cornbury's letter to the Lords of Trade. 4 *Col. Doc.*, 1000.

³ Their office was to determine every difference arising along the coast, in the forts or on the open sea. Each college had its admiral, vice-admiral, captains, subordinate officers and counselors appointed for the towns of its particular department. Their jurisdiction embraced everything connected with navigation, the security of the ports and the efficiency of the navy. *Dutch Battle of the Baltic*, by J. Watts De Peyster.

⁴ Andros' Report to Lords of Trade, on Province of New York. 1 *Doc. Hist.*, 60; *Daly's Judicial Organization*, 30.

with their lading into the harbor of New York. He at the same time appointed a register and marshal of the court. The said commission continued in force for five days.¹

On the 2d of July, 1696, William Pinhorne was appointed Judge of Admiralty by Governor Fletcher and Council.²

It has been observed that Fletcher erected the first regular Court of Admiralty in the Province. In his letter to the Lords of Admiralty in England, dated 19th November, 1694, he states he had been informed that the Province of New York, as well as the other Provinces in America, had ventured to hold Admiralty Courts without any commission from the Admiralty; he complained, further, that although the King's commission had empowered him to erect an Admiralty Court, the commission he had received from the Lords restrained him from appointing a judge, register and marshal, who were the principal officers of the court.³

On the 29th of April, 1697, however, the commissioners for executing the office of the Lord High Admiral of England directed commissions to be issued to William Smith as Judge, John Tudor as Register, and James Graham as Advocate of the Court of Vice-Admiralty of New York, Connecticut and East Jersey, and in case of their deaths or inability, others to be appointed in their room, and the names of the persons so appointed to be transmitted to the said commissioners. Mr. Jarvis Marshall was also commissioned on the same terms, a marshal of said court.⁴

Lord Bellamont was also authorized to appoint judges, registers, marshals and advocates for the Admiralty Courts of New York, Connecticut and East Jersey, and transmit the names of those appointed to the Lord High Admiral of England for approval or disallowance.⁵

In 1701, William Attwood arrived from England as Judge of the Court of Admiralty as well as Chief Justice of the Supreme Court, he having been commissioned as such judge by the Lords of Admiralty.⁶

¹ 2 Documentary History (8vo.), 296.

² Council Minutes, 7, 199.

³ 4 Colonial Documents, 112.

⁴ Record of Commissions, vol. 2, 124.

⁵ Record of Commissions, vol. 2, 123.

⁶ Lord Cornbury to the Lords of Trade, 4 *Col. Doc.*, 1000.

A court being thus permanently established, it was considered expedient to unite the office of Advocate-General, who was the Attorney of the Admiralty Court, with that of the Attorney-General, and accordingly the latter officer was thenceforth also commissioned as the former.

On the 13th of June, 1702, John Bridges was appointed by Governor Cornbury and Council, Judge of Vice-Admiralty of the Province of New York.

In 1703, April 1st, Roger Mompesson was commissioned as Judge of the Admiralty Court of Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, New York, the Jerseys and Pennsylvania.

This extended jurisdiction was subsequently curtailed. On the 5th of October, 1721, Francis Harison was appointed Judge of Admiralty for New York, Connecticut and the Jerseys, in place of Caleb Heathcote, deceased.

In 1738, on the 16th of January, Lewis Morris, Jr., was appointed a judge of the Admiralty Court for New York, Connecticut, and East and West Jerseys, and on the twenty-third, Capt. John Fred was made marshal and sergeant at mace, of the said court.

On the 5th of November, 1760, a commission issued to Lewis Morris, John Chambers, Daniel Horsmanden, David Jones, William Smith, John Cruger, Simon Johnson and Robert R. Livingston, to hold a court for trying and punishing crimes and offenses committed upon the seas.¹

On the 2d of August, 1762, Richard Morris was commissioned by Governor Monckton and Council, Judge of the Court of Vice-Admiralty of New York, to hold his office during pleasure. In 1763 (April 7th) Richard Nicholls was appointed by the High Court of Admiralty, in England, register and scribe of acts, causes and businesses depending in the respective Courts of Vice-Admiralty of New York, Connecticut, and East and West Jerseys.²

Judge Morris and Mr. Nicholls still held their offices in June, 1774, as appears from a report of that date, made by Governor Tryon, relative to the Province of New York. Thomas Ludlow was then marshal. The report also states that the judge, register

¹ Record of Commissions, 5, 178-180.

² Record of Commissions, 4, 149.

and marshal held their offices from the Crown, and were without salary; and that the court proceeded after the course of the civil law in matters within its jurisdiction which, at the time, had been so enlarged by divers statutes as to include almost every breach of the acts of trade.¹

In 1763, the fourth year of George III, an act was passed in Parliament relative to the trade of the American Colonies and Plantations; in the forty-first section of which it was directed "that all the forfeitures and penalties inflicted by this or any other act or acts of Parliament relating to the trade and revenues of the said British Colonies or Plantations in America, which shall be incurred there, shall and may be prosecuted, sued for and recovered in any Court of Record, or in any Court of Admiralty in the said Colonies or Plantations where such offense shall be committed, or in any Court of Vice-Admiralty which may or shall be appointed over all America (which Court of Admiralty or Vice-Admiralty is hereby respectively authorized and required to proceed, hear and determine the same) at the election of the informer or prosecutor."²

This section was altered, in 1768, by an act in which it was directed as suits for such penalties and forfeitures "in one court only of Vice-Admiralty over all America" might, from the distance from where the cause of action should arise, be attended with great inconvenience, that, from the first of September of that year, "all forfeitures and penalties inflicted by any act or acts of Parliament, relating to the trade or revenues of the British Colonies or Plantations in America, may be prosecuted, sued for and recovered in any Court of Vice-Admiralty appointed or to be appointed, and which shall have jurisdiction within the Colony, plantation or place where the cause of such prosecution or suit shall have arisen."³

This and the preceding section led to the act of February 14, 1787, subsequently alluded to.

Up to 1768, appeals from this court lay to the High Court of Admiralty in England. In that year, however, it was enacted that in all cases of prosecution or suit commenced and determined

¹ 1 Documentary History, 512.

² British Statutes at Large, vol. 12, p. 249.

³ British Statutes at Large, vol. 13, p. 14.

in any Court of Admiralty in the Colony or Plantation where the offense was committed, for any penalty or forfeiture inflicted by any parliamentary act relating to the trade and revenues of the British Colonies and Plantations in America, the aggrieved party might appeal to any Court of Vice-Admiralty appointed or to be appointed, and which should have jurisdiction within such Colony, Plantation or Place; which court was directed to hear and determine the appeal.¹

Governor Tryon, in the report of 1774, alluded to, says: "From this court (the Court of Admiralty) an appeal lies to a Supreme Court of Admiralty, lately established in North America, by statute; before this establishment, an appeal only lay to the High Court of Admiralty of England."

About 1774, Judge Morris resigned his office, having sided with the Colony against the encroachments of the British Crown. On the 31st of July 1776, the New York Provincial Convention appointed him Judge of the High Court of Admiralty of the State of New York. It also appointed John McKesson Register, and Robert Benson Marshal and Provost Marshal of said court.² Mr. Morris declined the office,³ and on the fifth of August ensuing, Lewis Graham was appointed by the said Convention in his stead,⁴ and commissioned on the 17th February, 1778.

On the 25th of November, 1775, the Continental Congress recommended the several Legislatures of the United Colonies to erect, as soon as possible, Admiralty Courts to determine concerning captures taken in the war existing between said Colonies and Great Britain, and to provide that all trials in such cases be had by a jury, under qualifications which the said legislatures should deem expedient. Congress, likewise, declared that in all cases an appeal should be allowed to them, or to such person or persons as they should appoint for the trial of appeals.⁵

In 1777, Congress, after appointing and discharging two other committees, appointed on the thirteenth of October a standing com-

¹ British Statutes at Large, vol. 13, p. 15.

² Journal Provincial Convention, New York, 1, 550.

³ Journal Provincial Convention, New York, 1, 554.

⁴ Journal Provincial Convention, New York, 1, 556.

⁵ Journal of Congress, 1, 260.

mittee of five of its members, they or any three to hear and finally determine upon appeals brought to said Congress from the Admiralty Courts of the respective States.¹ Three more members were added on the twenty-seventh of July in the next year, any three of the whole committee to hear and determine appeals.²

The Articles of Confederation (entered into by the States, July 9th, 1778), by their ninth article, declared that the United States, in Congress assembled, should have the sole and exclusive right of establishing rules for deciding in all cases what captures on land or water should be legal, and in what manner prizes taken by land or naval forces in the service of the United States should be divided or appropriated; also, the same right of appointing courts for the trial of piracies and felonies committed on the high seas, and of establishing courts for receiving and determining, finally, appeals in all cases of captures. They also provided that no member of Congress should be appointed a judge of any of said courts.

On the 6th of March, 1779, Congress declared that they or those appointed to determine appeals (*viz.*, a committee of their own members) from the Admiralty Courts, had necessarily the power to examine as well into decisions on facts as decisions on the law, and decree finally thereon; and that no finding of a jury in any Admiralty Court, or court for determining the legality of captures on the high seas, could or ought to destroy the right of appeal and reëxamination of facts reserved to Congress; and that no act of any one State could or ought to destroy the right of appeals to Congress in the sense above declared.³

In 1780, however, on the fifteenth of January, there was established a court for the trial of appeals from the Courts of Admiralty in the United States, in cases of capture, denominated, by a resolution of Congress, May twenty-four of that year, "the Court of Appeals in Cases of Capture," to consist of three judges appointed and commissioned by Congress, either two of whom, in absence of the other, to hold the said court for dispatch of business. The court appointed its own register. Congress further declared, that the trials in the said court should be according to the usage of nations and not by jury.⁴

¹ Journal of Congress, 3, 430.

³ Journal of Congress, 5, 87.

² Journal of Congress, 4, 429.

⁴ Journal of Congress, 6, 14.

The salaries of the judges were fixed at \$2,250 each.¹

On the 28th of October, 1779, Congress ordered that a Board of Admiralty should be established to superintend the naval and marine affairs of the United States, to consist of three commissioners, not Members of Congress, and two Members of Congress, any three of whom to form a board for the dispatch of business, to be subject in all cases to the control of Congress; no more than one member of the board, at any time, should belong to the same State; that there should be a secretary to the board, appointed by Congress, and a clerk, appointed by the board, and that the said board should sit in the place where Congress should be held, and all its proceedings should be inspected by Congress, or a committee appointed for that purpose, as often as might be thought proper or convenient; that the salary of each of the three commissioners who should conduct the business of the Admiralty Board should be \$14,000 per annum, and that of the secretary of the board be \$10,000 per annum; said salaries to be annually or oftener, if Congress should judge it expedient, revised and altered agreeably to the appreciation of the Continental currency.²

On the 5th of April, 1781, Congress, by an ordinance pursuant to the Articles of Confederation, established courts for the trial of piracies and felonies committed on the high seas.³

In 1786, the salaries of the Judges of the Court of Appeals were abolished by Congress, "as the war was at an end, and the business of the court, in a great measure, done away." In lieu thereof, ten dollars a day were allowed them for attendance on and travel to and from said court.⁴

On the 14th of February, 1787, the New York Legislature passed an act to prevent encroachments of the Court of Admiralty of the State, in which it was directed that the said court should not meddle or hold plea of anything done within this State, but only of things done upon the sea "as it had been formerly used." That of all manner of contracts, pleas and quarrels, and of all other things done, arising within the body of any county in this State, as well by land as by water, and also of wreck of the sea,

¹ Journal of Congress, 6, 182.

³ Journal of Congress, 7, 76.

² Journal of Congress, 5, 395-397.

⁴ Journal of Congress, 11, 33-123.

the said court should have no cognizance, power or jurisdiction, but all the above matters should be tried and remedied by the laws of the land, and not by the said court. Cognizance should be had, however, by the said court of the death of any person, and of mayhem done, in vessels in the main stream of great rivers out of the body of any county, or nigh to the sea, and in no other places of said rivers.

It was provided, however, that nothing in the above act should extend to any libel, information or suit in said court, for or concerning the forfeiture of any goods, wares or merchandise seized by virtue of an act imposing duties on certain goods, wares and merchandise imported into this State.¹

On the 17th of September, 1787, the present Constitution of the United States was adopted by the Federal Convention.

In its formation it was thought proper, by reason of the relation of maritime commerce to the intercourse of the whole people with other nations, or to the intercourse between themselves, to vest the entire admiralty jurisdiction in the Federal Government.

Consequently, by section second of that Constitution, it was decreed that the judicial power of the United States should embrace "all cases of admiralty and maritime jurisdiction," and in 1789, at the adoption by our State of the said Constitution, the Admiralty Court of the State of New York ceased to exist.

In following out the section above referred to, Congress, by an act passed on the 24th of September, 1789, vested in the District Courts of the United States exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures were made on waters navigable from the sea by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas, saving to suitors in all cases the right of a common law remedy, where the common law was competent to give it.²

An act, five days later, directed that the forms and modes of proceeding in causes of admiralty and maritime jurisdiction should be

¹ Laws of New York (Loudon's ed.), 47.

² Laws of United States (Bioren & Duane's ed.), 2, 60.

according to the course of the civil law. The second section of an act passed in 1792, prescribed that the forms and modes of the above jurisdiction should be according to the principles, rules and usages which belong to the Courts of Admiralty as contradistinguished from courts of common law, except so far as may have been provided for by the act to establish the Judicial Courts of the United States, subject, however, to such alterations and additions as the said courts should in their discretion deem expedient, or such regulations as the Supreme Court of the United States should think proper from time to time by rule to prescribe to any Circuit or District Court concerning the same.

On the 29th of April, 1812, it was enacted that the District Court, in the New York district, should consist of two judges who should reside in said district; that the senior judge should preside in the District Court, and in case of difference between the judges, his opinion should prevail, and that said court should be held by one judge in the absence of the other. The senior judge, or in his absence the other judge, and one of the justices of the Supreme Court should compose the Circuit Court of the United States in said district.¹

This arrangement was altered on the 11th of April, 1814, by an act dividing the State of New York into two Judicial Districts, the Northern and Southern, for each of which a judge was to be appointed, and directing the Circuit Court to be thereafter held for the Southern District only. The Northern District Court, besides the ordinary jurisdiction of a District Court, was to have jurisdiction of all causes (except of appeals and writs of error), cognizable by law in a Circuit Court of the United States; writs of error to lie from decisions therein to the Circuit Court in the southern district of New York in the same manner as from other District Courts to their respective Circuit Courts.²

Appeals now lie from all final decrees of the District Courts, in causes of admiralty and maritime jurisdiction, and cases of prize where the matter in dispute exceeds the sum or value of \$50, exclusive of costs, to the next United States Circuit Court to be holden in the district where the decree is pronounced; and from

¹ Laws United States, 421, 422.

² Laws United States, 679.

all final decrees in the Circuit Court, to the Supreme Court of the United States in the same cases, where the matter in dispute exceeds, exclusive of costs, the sum or value of \$2,000, at any time within five years after the decree is rendered, or in case of insanity, coverture, infancy or imprisonment, after such disability shall have ceased.¹

The officers of the District Courts are a clerk and marshal appointed for each of the two districts.

Commissioners are likewise appointed by the Circuit Courts to take admiralty stipulations, as well as acknowledgments of bail, depositions and affidavits in the Circuit and District Courts, and they have all the powers that a Judge or Justice of the Peace may exercise under the sixth section of the act of 20th July, 1790, for the government and regulation of seamen in the merchant service.

During the colonial period, the Court of Admiralty met with the same opposition manifested toward the Court of Chancery. Like the latter, it was instituted by the Crown under the authority of which its judges, registers and marshals were appointed, hence awakening that feeling of independence in the Colonists which seems ever to have possessed them, and which they exhibited whenever they deemed it encroached upon by the kingly power. The undisturbed existence of the Colonial Supreme Court may be traced to the fact that the Colonists claimed the court to have been created by the act of the Assembly of 1691, and not from the subsequent ordinance of Lord Bellamont reviving that act and those emanating from it.

The forty-first section of the act of 1763, relative to the suing for penalties and forfeitures in the Vice-Admiralty Court, created great dissatisfaction among the Colonists. The course of the General Assembly probably led to the subsequent act of 1768.

On the 18th of October, 1764, the General Assembly addressed a petition respectively to the King, Lords and Commons, in the former of which they say that "the unavoidable delegations of the royal authority which necessarily expose us to the designs of wicked men, leave us neither rest nor security, while a custom house officer may wantonly seize what a judge of your Majesty's

¹ Conkling's United States Admiralty, 2, 372. (Ed. 1857.)

Court of Vice-Admiralty may condemn in his discretion, or at best restore to the honest proprietor without a possibility of a restitution for the injury." In the second they declare "that the amazing powers vested by some of the late acts of trade in the Judges of the Vice-Admiralty Courts, who do not proceed according to the course of the common law, nor admit of trials by juries, one of the most essential privileges of Englishmen, has so unfavorable an aspect on the property of the subject, that we could not, consistent with our duty, suppress our apprehensions;" and in the third they say, "we cannot stifle our regret that the laws of trade in general change the current of justice from the common law, and subject controversies of the utmost importance to the decisions of the Vice-Admiralty Courts who proceed not according to the old wholesome laws of the land, nor are always filled with judges of approved knowledge and integrity."¹

On the 11th of December, 1765, the General Assembly again addressed a petition respectively to the King and both Houses of Parliament, in which they complain that the right of trial by jury, till lately uninterruptedly enjoyed, was "infringed by several late acts of Parliament extending the jurisdiction of the Admiralty Courts to causes altogether foreign to their nature and to such as could constitutionally be only tried by a jury, and this in a manner the most inconvenient and grievous imaginable;" and also "by our municipal law, all admiralty jurisdictions have been confined to marine causes. We therefore tremble at the great alterations which have been made in that wholesome system of laws which, as English subjects inheritably, belongs to us, by giving the Courts of Admiralty a jurisdiction in causes arising on penal statutes, and only triable by the courts of common law."²

The General Assembly once more, on the 31st December, 1768, in another petition to the Lords in Parliament, complain "that by the late extension of the admiralty jurisdiction to penalties, forfeitures and even trespasses upon the land, we lose the unspeakable advantages of the ancient trial by jury, so deservedly celebrated by Englishmen in all ages as essential to their safety."³

¹ Journal General Assembly, 2, 772, 775, 779.

² Journal General Assembly, 2, 795, 800.

³ Journal General Assembly, 1769, p. 14.

Among the last proceedings of the last General Assembly, which, convening on the 4th of April, 1769, and continued by successive prorogations till the 10th of January, 1775, was dissolved on the third of April following, were petitions respectively to the King, Lords and Commons, emanating from a resolution moved by Colonel Philip Schuyler, on the third March of the last mentioned year. The resolution declared that so far as the act of 4th George III, extended the Admiralty Courts beyond their ancient limits, and deprived the Colonists of a trial by jury it was a grievance.

On the 25th of March, 1775, the above petitions were adopted by the Assembly.

In the petition to the King they denounced the "extending the Courts of Admiralty beyond their ancient limits, giving them a concurrent jurisdiction in causes heretofore cognizable only in the courts of common law, and by that means depriving the American subject of a trial by jury, as grievous and destructive of our rights and privileges." In the petition to the Lords, they state that "the jurisdiction of the Admiralty Courts has been extended beyond its ancient limits; and the judges of those courts invested with new and unconstitutional powers;" and in that to the Commons they complain of these matters as destructive to freedom and injurious to their property.¹

¹ Journal General Assembly, 1775, pp. 109-117.

LIST OF BIOGRAPHIES.

GOVERNORS.

GEORGE CLINTON,	DANIEL D. TOMPKINS,
JOHN JAY,	DE WITT CLINTON,
MORGAN LEWIS,	JOSEPH C. YATES,
Lieutenant-Governor JOHN TAYLER.	

CHANCELLORS.

ROBERT R. LIVINGSTON,	JAMES KENT,
JOHN LANSING, Jr.	

CHIEF JUSTICES.

JOHN JAY,	MORGAN LEWIS,
RICHARD MORRIS,	JAMES KENT,
ROBERT YATES,	SMITH THOMPSON,
JOHN LANSING, Jr.,	AMBROSE SPENCER.

JUSTICES OF THE SUPREME COURT.

ROBERT YATES,	HENRY BROCKHOLST LIVINGSTON,
JOHN SLOSS HOBART,	SMITH THOMPSON,
JOHN LANSING, Jr.,	AMBROSE SPENCER,
MORGAN LEWIS,	DANIEL D. TOMPKINS,
EGBERT BENSON,	WILLIAM W. VAN NESS,
JAMES KENT,	JOSEPH C. YATES,
JACOB RADCLIFFE,	JONAS PLATT,
JOHN WOODWORTH.	

GOVERNORS.

GEORGE CLINTON,

YOUNGEST SON OF CHARLES CLINTON,

Was born at Little Britain, in the county of Ulster (afterward Orange), on the 26th of July, 1739.

When he was about sixteen (in 1755), he entered on board a privateer which sailed from the port of New York, and endured many trials and hardships.

In 1758, at the age of nineteen, he joined, as a subaltern (with his father, Colonel Charles Clinton, and Captain James Clinton, his brother), the successful expedition of Colonel Bradstreet against Fort Frontenac, near Lake Ontario, and with his brother, succeeded, at the head of a small force, in capturing one of the French vessels.

He then entered the office of William Smith, historian of the New York Colony, and subsequently Chief Justice of Canada.

On the 30th of August, 1759, he was appointed by letters patent, under the great seal of the Province, from George II, Clerk of the Court of Common Pleas, Clerk of the Peace and of the Court of Sessions of the Peace of Ulster county, in room of John Crook, deceased. Christopher Tappan was his Deputy.

In 1760 (December 12th), Mr. Clinton was reappointed as above, during good behavior, and held the reappointment until his death.

On the 12th of September, 1764, he was commissioned by the Governor, attorney at law, to practice in the Mayor's Court in

Albany, and inferior Courts of Common Pleas in the counties of the Province, except in the Mayor's Court of the city of New York.

In 1765 (26th of August), he was appointed surrogate in room of Petrus E. Elmendorph, and on the 27th of October, 1768, he took his seat as a member of the General Assembly from Ulster county.

The next year, on the fourth of April, he again entered the General Assembly as a representative from the same county, on a reëlection (the preceding Assembly having been dissolved by Governor Sir Henry Moore), and continued a member until its adjournment on the 3d of April, 1775, which proved its final dissolution.

In 1775, he was a member of the Provincial Convention which, by a previous call from a Committee of the city and county of New York, assembled on the twentieth of April, at the Exchange in the said city, to choose delegates to represent the New York Colony in the second Continental Congress, and on the twenty-second of April was elected one of the delegates.

On the fifteenth of May following, he took his seat in the above body, which had assembled on the fifth previous, at Smith's tavern in Philadelphia, and afterward at Carpenter's hall in said city.

On the nineteenth of the succeeding December, the second New York Provincial Congress, appointed him Brigadier-General of the militia of Ulster and Orange counties, formed into one brigade.¹

In the following year he was present at the Continental Congress and voted for the resolutions introduced in that body on the seventh of June,² which finally resulted, on the fourth of July, in the Declaration of Independence. His duties as Brigadier-General, however, compelling him to leave for New York before that instrument was regularly signed, his name is not attached to it.

In 1776, he was appointed a Deputy to the fourth New York Provincial Congress, which assembled on the ninth of July at White Plains, Westchester county; changed their name to "Convention of Representatives of the State of New York," July tenth, on occasion of receiving and adopting the Declaration of Indepen-

¹ See Journal of New York Provincial Congress, vol. 1, p. 226.

² Journal of Congress, 1776, vol. 2, p. 204.

dence, the day before; and dissolved finally on the 13th of May, 1777.

This Convention framed and adopted the first Constitution of the State of New York.

On the 8th of August, 1776, he was, as Brigadier-General, appointed to the command of all the levies raised and to be raised in Ulster, Orange and Westchester counties, and directed to march them to the posts at and above the Highlands.¹ This was to prevent the ascent of the river by the British from the city of New York.

On the following first of January, he was directed to raise one thousand men from the counties of Dutchess, Ulster, Orange and Westchester.² On the succeeding twenty-fifth of March, the New York Convention requested the General Congress to appoint a commandant of the forts in the Highlands. General Clinton received this appointment, and was made also Brigadier-General in the continental service.³

On the 13th of May, 1777 (the last day of the session), he received the thanks of the New York Convention for "long and faithful services, as a delegate in the Continental Congress, to the Colony of New York, and to the State."⁴

In 1777 (July 9th), the Council of Safety (invested by the Convention of that year with powers to carry on the Government of the State till the meeting of the Legislature) declared that on examination of the poll lists and ballots, returned by the sheriffs of the respective counties, of the elections held in said counties, Mr. Clinton was elected both Governor and Lieutenant-Governor of the State.⁵ He accepted the former station, and on the thirtieth of July took the oath of office administered to him by the President of the Council of Safety.⁶ Pierre Van Cortlandt, President of the Council, discharged the duties of Lieutenant-Governor.

¹ Journal New York Provincial Convention, vol. 1, p. 563.

² Journal of New York Committee of Safety, 754. *Jour. N. Y. Prov. Cong.*

³ Journal of Congress, vol. 3, 100.

⁴ Journal of New York Provincial Convention, 1, 931.

⁵ Journal of New York Council of Safety, 1, 990. *Jour. N. Y. Prov. Cong.*

⁶ Journal of New York Council of Safety, 1, 1021. *Jour. N. Y. Prov. Cong.*

The Legislature assembled on the tenth of September following, and Governor Clinton delivered his Message orally, chiefly confined to matters of the war.

On the succeeding fourth of October, Sir Henry Clinton, the British commander, left the city of New York with five thousand men in flat boats and transports, on his way to coöperate with Burgoyne at Bemis Heights.

There were at that time four American posts at the Highlands, viz.: Forts Montgomery and Clinton on the west side of the Hudson, separated only by a small stream called Poplopen's Kill emptying into the river; Fort Independence south of Fort Clinton and on the east side of the river, and Fort Constitution opposite West Point. From the mouth of the above kill, and extending across so as to obstruct the river, were *chevaux de frise* and a boom with a heavy iron chain, placed there by the Americans.

Governor Clinton left the Legislature about the fourth of October, and took command at Fort Montgomery. His brother Colonel Charles Clinton commanded at Fort Clinton (both Forts numbering about six hundred men, one half without bayonets), while General Putnam with about one thousand five hundred troops had his head-quarters at Peekskill.

On the sixth, about ten in the morning, an advanced party of about thirty Americans was attacked by the vanguard of the British force at Doodletown, two and a half miles from Fort Montgomery. The enemy, on the party's refusal to surrender, fired upon them; the Americans returned the fire and retreated to Fort Clinton. Soon after, Governor Clinton received intelligence that the British were advancing on the west side of the Dunderberg or Thunder mountain to attack the forts in the rear. He immediately threw out a detachment of over a hundred men, under Lieutenant-Colonels Bruyn and McClaghry, toward Doodletown, with another of sixty and a brass field piece, who took post in Bear Hill defile, a rough pass, skirted with forest. These detachments were soon attacked by the enemy with his whole force, which attack was resisted gallantly by the Americans. The party at the défile were reinforced to a hundred, and they swept the pass with their field-piece, but were soon obliged to give way before the advance of the British through the bordering woods.

They spiked their piece, being driven from it by the bayonet, and retreated in good order to a twelve-pounder under Colonel Lamb, which Clinton had ordered to cover their retreat, and thence to Fort Montgomery.

It was now afternoon. Governor Clinton had previously dispatched a messenger to General Putnam for reinforcements, but the treacherous messenger (one Waterbury) had delayed his movements, and consequently no aid or tidings were received by Clinton. He, however, posted his men in the most advantageous manner for the defense of his fort. At about four o'clock, the British invested both posts, and the commander sent a flag, the sun an hour high, with summons for the posts to surrender within five minutes to prevent slaughter. Governor Clinton dispatched Lieutenant-Colonel Livingston to receive the flag, but was informed there were no orders to treat except on proposals to surrender the whole force as prisoners of war, in which case good usage was assured. Governor Clinton determined to defend the forts to the last. Ten minutes after, they were invested on all sides (the British vessels also firing upon the forts), and a desperate conflict ensued. Roused by the firing, a detachment from General Putnam's force hastened toward the scene of conflict, but did not reach the river until twilight and when it was too late to aid Clinton.

Soon after dusk, the British, by their superior numbers, forced the lines and redoubts at both posts. The garrisons fought their way out, and it being a cloudy night, many of the men escaped. Both officers and men behaved with great gallantry. Colonel Charles Clinton was wounded, but eluded the enemy by fleeing down a precipice clinging to the shrubs, and the next day reached his residence in Orange county, sixteen miles distant. The Governor escaped by mingling with the enemy as they rushed into the fort; crossed the Hudson in a boat and reached General Putnam the same night at Continental village, three miles from Peekskill, there to concert further plans for resistance. The loss of Americans in killed, wounded and prisoners (among the latter Lieutenant-Colonels Livingston, Bruyn and McClaghry), was about three hundred; that of the enemy about one hundred and forty, among the killed being Lieutenant-Colonel Campbell, command-

ing the 52d and 57th British regiments, and Count Grabouski, a Pole, acting as aid to Sir Henry Clinton.

The next day Governor Clinton rallied about two hundred of his men, who had scattered themselves after retreating from the forts, in the mountains, and joined his brother, Colonel Clinton, at the latter's dwelling.

The British cut through the obstructions at the mouth of the Poplopen Kill, and then swept up the river. Above the boom the Americans had two frigates, two galleys and an armed sloop.¹ The same night the forts were taken, the vessels were abandoned, set on fire and destroyed. The next day (the 7th) Fort Constitution was demolished by the Americans; both the burning of the vessels and destruction of the fort being without Governor Clinton's orders. There was nothing now to obstruct the passage of the British up the river.

Sir Henry Clinton devolved the command of the expedition on Sir James S. Wallace and General John Vaughan. The former commanded a flying squadron of light frigates, with barges, batteaux and boats for the landing of troops, while under the latter was a force of three thousand six hundred men. As the expedition passed up, they destroyed every American vessel, fired upon the dwellings of those friendly to the American cause on the banks, and, landing in small parties, made havoc, with weapon and torch, of hamlets and neighborhoods. On the sixteenth they reached Kingston,² then the Capital of the State, with a wealthy population of between three and four thousand. Most of the houses were built of stone. The Legislature, however, was not there; it had received the tidings, on the seventh preceding, of the loss of Forts Montgomery and Clinton, and in view of the crisis, and so many members absenting themselves by reason of their military duties and to protect their families, it had dissolved.³

Landing his forces, Vaughan, having been faintly opposed by about one hundred and fifty militia,⁴ marched in two divisions to Kingston and reduced it to ashes, with the exception of one house

¹ Lossing's Field Book of the Revolution, 2, 168.

² Journal of New York Provincial Congress, 1, 1072.

³ New York Senate Journal, 1777-79, p. 26.

⁴ Journal of New York Provincial Congress, 1, 1072.

belonging to a Mrs. Hammersley, who was acquainted with several British officers.¹

In the meantime Governor Clinton had established his headquarters at a point about four miles west of the village of New Windsor, in Orange county, for the purpose of collecting a force sufficient for marching to the defense of Kingston. On the tenth, a horseman named Daniel Taylor entered Clinton's camp. He proved a messenger bearing a letter from Sir Henry Clinton to Burgoyne, informing him of the British approach; the messenger supposing he was entering a loyalist camp.² The letter was inclosed in a silver ball like a fusee bullet, and closed with a screw in the center. When the messenger was brought before Governor Clinton, he discovered his mistake and swallowed the bullet; an emetic was administered, the bullet discovered but again concealed; and Taylor only produced it at a threat from the Governor of being immediately hanged and cut open in search of it.³

Governor Clinton's force consisted, on the twelfth, of the militia of the region, two small Continental regiments and a regiment of one hundred and thirty men under Colonel Southerland. From these he had detached strong guards along the river bank, with orders to keep pace with the British vessels and interpose should they attempt a landing at Kingston. His particular object was to collect his whole force at one point, so as to be able to oppose the progress of the enemy, or throw himself between them and such places as they might wish to gain.⁴

With this object, he advanced by a forced march, toward Kingston, and on the sixteenth, only two hours after the enemy had reached there arrived at Hurley, a few miles distant. Thence he saw the flames, of the village without the power, from the inferiority of his force, to prevent the catastrophe or attack the invaders. While the fire was in progress, the messenger, Daniel Taylor, who was a major in the British service, and who had been tried and condemned by a court martial summoned by the Governor, was hanged.⁵

¹ Barber's History of New York, 342.

² Lossing's Field Book, 2, 116.

³ Journal of Council of Safety (Letter of Clinton), 1068.

⁴ Journal of Council of Safety (Letter of Clinton), 1069.

⁵ Journal of Council of Safety, 1, 1072.

On the seventeenth, Burgoyne, having lost the two battles of Bemis Heights, surrendered to Gates; and on the receipt of the tidings, Vaughan hastily retreated, with the whole British expedition, to the city of New York.

The valley of the Hudson being now free from invasion, Governor Clinton issued his proclamation from Poughkeepsie, on the fifteenth December following, convening the Legislature at that place on the 5th January, 1778. Several members of the Senate and Assembly accordingly met, and adjourning day after day from want of the necessary numbers, finally commenced the session on the fifteenth.¹ Thenceforward the Legislative sessions were continuous.

On the twenty-third of February succeeding, Governor Clinton issued a proclamation from Poughkeepsie (which, at the destruction of Kingston, became the Capital of the State until the final removal of the Legislature to Albany), pursuant to certain resolutions, passed two days previous by the Legislature, concerning the dispute which had so long existed between the State of New York and the New Hampshire Grants, and known as the Vermont controversy.²

¹ Journal of Senate, 1778, 26. Journal of Assembly, 1778, 28.

² The controversy between New York and Vermont dates from the grant of a township six miles square, twenty miles east of the Hudson river, made on the 3d of January, 1749, by Benning Wentworth, Governor of New Hampshire (he claiming the territory to be within the limits of that Province), and which was called (after his baptismal name) Bennington. The knowledge of this grant was communicated by Wentworth to the elder George Clinton, then Governor of the Province of New York, in a letter dated the 25th of April, 1750. The township was situated within the limits of a grant under New York to the Rev. Godfrey Delliuss, dated September 3d, 1697, and extending from Saratoga along the east side of Lake Champlain to Crown Point.

Governor Clinton, claiming for the eastern boundary of New York the Connecticut river, resisted Wentworth's grant as being within the limits of the former Province. Both Governors then agreed to refer the matter of boundary to the British Crown. In the meantime, however, Wentworth, desirous of the patent fees, continued to make further grants west of the Connecticut, until, up to 1764, he had granted over one hundred and twenty townships.

Cadwallader Colden, at the above period, Lieutenant-Governor of New York, to arrest the progress of these grants, issued, on the 28th of December, 1763, a proclamation commanding the Sheriff of the county of Albany to make a return of the names of all persons who had taken possession of lands under the

On the 23d of October, 1779, Governor Clinton was made, by virtue of his office, one of a Council to carry on the government of the State in the southern portion thereof, between the time the

New Hampshire grants, and claiming jurisdiction for New York as far east as the Connecticut river, under the charter of Charles II to the Duke of York.

On the 13th of March, 1764, Wentworth issued a counter proclamation, pronouncing the Duke of York's patent obsolete, denying the above jurisdiction, encouraging the inhabitants of the grants to persevere in their improvements, and commanding the civil officers within his Province to deal with all persons who should presume to interrupt the settlers on said grants, the pretended right of jurisdiction claimed by New York notwithstanding.

On the 20th of July following, the King, in Council, decided the west banks of the Connecticut river, "from where it enters the Province of Massachusetts Bay as far north as the forty-fifth degree of northern latitude," to be the boundary line between New Hampshire and New York.

Although the Governor of the former Province remonstrated against this change of jurisdiction, he at length, by proclamation, recommended obedience to it.

New York claiming the decision to be retrospective as well as prospective, declared the grants under New Hampshire void, and divided the territory as follows: The southwestern part was annexed to Albany county, the northwestern was erected into Charlotte county, while on the east side of the Green Mountains were formed Gloucester and Cumberland counties, the former north and the latter south. Courts of Justice were erected in each of the counties.

The settlers of the grants under New Hampshire, being required to surrender their charters and repurchase their lands under titles from New York, and refusing, the latter Province issued new grants to other persons in whose names judgments in ejectment were obtained in the Albany courts, under which proceedings were instituted to dispossess the former owners.

These proceedings were resisted by the New Hampshire settlers. Foremost in defending the claims of New Hampshire were Ethan Allen and Seth Warner. The former distributed pamphlets, written by himself, among the settlers, inciting them to resistance; and the latter wounded and disarmed an officer who attempted to arrest him as a rioter.

Associations were also formed among the people of the grants; a convention was called, and an agent appointed who laid the whole subject before the King. The latter interdicted New York from making more grants in the disputed territory, until his further pleasure was known. The Governor of New York, however, still continued his grants, under which writs of ejectment still issued, until a convention assembled at Bennington, which resolved to resist by force the unjust claims of New York. Ethan Allen was made Colonel-Commandant and Seth Warner Captain of a military association of the Green Mountain Boys, to carry into execution the New Hampshire plan of resistance, while Committees of Safety were appointed in several towns west of the Green Mountains, where the feeling against New York raged the highest.

enemy should abandon or be dispossessed of the said portion and the convening of the Legislature, according to an act of the Legislature of the above date, composing the Governor, Chancellor,

On the other hand, the militia of New York were called as a *posse comitatus* to aid the sheriff in the execution of his duties, and the Governor offered a reward of one hundred and fifty pounds for the apprehension of Allen, and fifty pounds each for Warner and five others. Allen, Warner and the others offered in their turn five pounds for the apprehension of the Attorney-General of New York.

Committees from the several towns of the New Hampshire Grants formed themselves into a Convention which, among other acts, ordained that "no person should take grants or confirmations of grants under New York," and forbid all inhabitants in the districts of the Grants to accept office under that Province.

On the 9th of March, 1774, the General Assembly of New York passed a law punishing with imprisonment, and in some cases with death, those who resisted the authority of the Province, specifying, among others, Allen and Warner.

On the 13th of March, 1775, a collision occurred between sundry inhabitants of Cumberland county and the sheriff with other officers of the court of that county, at Westminster, in which the officials fired upon the people, who had taken possession of the Court House, killing one man and wounding others. This massacre, as it was called, roused the whole county, particularly as the officers engaged in it, and who had been imprisoned in the Northampton jail, were released on application to the Chief Justice of New York.

Committees of inhabitants on the east range of the Green Mountains held a meeting on the eleventh of April following, which voted it the duty of the said inhabitants to wholly renounce and resist the administration of the Government of New York, till the lives and property of such inhabitants could be secured by it, or till their grievances were laid before the King, together with a proper remonstrance against the unjustifiable conduct of that Government, with a petition to be freed from New York, and either annexed to another government or be erected into a new one till such time as his Majesty should settle the controversy.

Then followed the battles of Lexington and Concord on the 19th April, 1775, and the further continuance of the controversy was arrested by the aspect of affairs between the mother country and the Colonies. Although the inhabitants of the New Hampshire Grants still resisted the authority of New York, their opposition settling every day into a more firm and decided character, their patriotism urged them to the Colonial side. Colonel Allen, on the 10th of May, 1775, stormed and took the fortress of Ticonderoga from the British, and Warner, two days after, captured from the same the post of Crown Point. Through the exertions of these two in the Continental Congress and Provincial Congress of New York, a regiment of Green Mountain Boys or settlers of the New Hampshire Grants was raised to aid in the common effort for independence.

The visit of the two to the Provincial Congress was under peculiar circumstances. A reward, as is seen, had been offered by New York for their appre-

Judge of the Supreme Court, Representatives in the Senate and Assembly, Secretary of State, Attorney-General and Judges of the several counties into such Council.

hension as rioters, and as defying the rightful authority of the State. Opposition was manifested at first to their admittance, but at length, by vote, the Congress on the 4th July, 1775, admitted them, when having been heard on the object of their mission, they withdrew.

On the twentieth of July succeeding, Allen wrote from Ticonderoga to the Provincial Congress, assuring them he would use his influence to promote a reconciliation between New York and her former discontented subjects on the New Hampshire Grants. Warner was commissioned by the Continental Congress as colonel, with authority to name the officers of the regiment which was raised on the Grants, independent of New York.

Still, although all active controversy of the people of the Grants with New York had ceased, the feeling that had dictated it survived.

On the 16th of January, 1776, they assembled in Convention at Dorset, and on the seventeenth dispatched a petition by Captain Heman Allen and Lieutenant Brackenridge to the Continental Congress, in which petition, after declaring their willingness to join in the common defense, they stated they were not willing so to do under New York, as it would be an acknowledgment of its authority; and they further requested Congress to call upon them, when necessary, as inhabitants of the New Hampshire Grants.

This was the first application of these people to Congress. That body, however, recommended submission to New York for the time being, without prejudice to the subject matter of controversy when the present national difficulties should cease.

Next came the general Declaration of Independence. This placed the people of the New Hampshire Grants in a more precarious condition than before. They had originally, as is seen, purchased their lands under royal grants from the Governor of New Hampshire. They had relied upon the Crown for redress between them and New York, and now the connection between the Crown and the contending parties was suddenly broken, leaving no superior party to decide the controversy.

On the 2d of August, 1776, also, the Convention of Representatives of New York resolved that the quit rents formerly owing to the Crown, were now due to that State.*

* Before the Revolution, lands in the Colony of New York were granted with a reservation of a certain rent to be annually paid in money or in kind to the Government of Great Britain. The usual rent charged, it will be observed, was on every hundred acres of land two shillings and six pence sterling or currency. This was originally the only pecuniary consideration given for these lands to the Government. Some of these rents were, in comparison with the immense extent of the lands granted, not much more than nominal. In time, however, they arose on several of the patents to a large sum. During the Revolution the collection of the rents was in a great measure suspended, but on the 1st of April, 1786, "an act for the collection and commutation of quit rents" was passed in which the manner of payment and collection was clearly defined.

In 1780, on the night of the 14th of October, Sir John Johnson, at the head of a large force, consisting of his Greens, a company of Yagers, one of British regulars, and a number of Butler's

To submit to New York was to yield all their property, by yielding the whole question of controversy (independently of the minor fact that the annual quit rents reserved to the Crown in the New Hampshire Grants on every hundred acres were one shilling proclamation money, equal to nine pence sterling, while, in the grants of the New York Governors, the rents were two shillings and six pence sterling); to oppose, was to hazard a contest, not only with New York, but Congress. They had renounced all allegiance to the Crown, and the time they thought had consequently arrived (for to remain without any government at all was impossible) to erect a separate government of their own.

A Convention of fifty-one members, representing thirty-five towns, had assembled on the twenty-fourth of July preceding the above second of August, at Dorset; an association among themselves had been there agreed upon, in defense of the liberties of the country, but declaring they would not associate with either of the counties of New York or with its Convention, and further declaring any of the inhabitants of the Grants, enemies to the common cause, who should thus associate.

The Convention, after appointing a committee of three to invite the people of every town in Cumberland and Gloucester counties to unite in the creation of a new State, adjourned to meet at Dorset on the following twenty-fifth of September, where, having been joined by several members from the above counties, they unanimously resolved "to take suitable measures, as soon as may be, to declare the New Hampshire Grants a free and separate district;" and also that "no law or laws, direction or directions from the State of New York should be accepted."

A committee, consisting of Ira Allen and William Marsh, was then appointed to further urge upon the counties of Cumberland and Gloucester, the expediency of making the Grants a separate State.

On the 15th of January, 1777, the Convention met at Westminster and published the declaration that the New Hampshire Grants were a free and independent jurisdiction or State, under the name of New Connecticut *alias* Vermont; and ordained that a Bill of Rights be prepared and a form of government established, at the next session of the Convention. They furthermore sent a declaration and petition, signed by Jonas Fay, Thomas Chittenden, Heman Allen and Reuben Jones, to the General Congress, announcing the district to be a free and independent State; narrating the history of the controversy, and praying to be received "among the free and independent American States, and delegates therefrom admitted to seats in the grand Continental Congress."

The Convention of New York, indignant at this procedure, appealed by letter under date of January 20th, 1777, to Congress, complaining of the designs of the Grants.

On the contrary, Colonel Thomas Young, of Philadelphia, published on the 11th April of that year, an address to the "Inhabitants of Vermont, a free and

rangers, with Brant and the Seneca warrior, Corn Planter, leading a throng of Indians, left Unadilla for an incursion into the valleys of the Schoharie and Mohawk. In addition to this force, Sir John

independent State, bounding on the river Connecticut and Lake Champlain," in which he told them to persevere in their efforts to be free and independent; and referred to the recommendation of Congress (10th May, 1776), for all communities returning to a natural state to adopt such government as was fitting for them and the Union.

On the twenty-eighth of May following, the New York Council of Safety addressed another letter to Congress, complaining that, according to report, the Grants were privately countenanced in their designs by certain members of that body.

On the 30th of June, Congress (the publication of Young being laid before them) resolved that the independent government attempted to be established by the people styling themselves inhabitants of the New Hampshire Grants, could derive no countenance or justification from the act of Congress declaring the United Colonies to be independent of the Crown of Great Britain, nor from any other act or resolution of Congress; and that the Westminster declaration and petition be dismissed. They also excused their raising and officering the Green Mountain regiment, commanded by Colonel Warner; declaring they thereby never meant to give any encouragement to the claim of the Grants to be an independent State, and stigmatized paragraphs from Young's address as "a gross misrepresentation of the resolution of Congress" referred to.

Meanwhile, on the fifth of June preceding, the adjourned Westminster Convention, had reassembled at Windsor, appointed a Committee to draft a constitution and recommended a convention of delegates from each town to meet on the second of the following July again at Windsor. On that day (next succeeding the one on which Burgoyne encamped with his forces before Ticonderoga) the Convention met. The draft of a Constitution was presented, but while reading it, paragraph by paragraph, for the last time, tidings arrived of the evacuation of Ticonderoga by the American General, St. Clair. The Convention, alarmed for its safety, was about to leave forthwith, when a thunder storm prevented it, and the reading of the Constitution was finished. It was adopted, and the Convention, after appointing a Council of Safety for the government of the State during its recess, adjourned.

On the 23d of February, 1778, Governor Clinton issued his proclamation, in pursuance of certain resolutions of the New York Legislature, passed two days previous, specifying said resolutions. They were to the effect that while New York should maintain her rightful supremacy over the persons and property of her disaffected subjects, she would make overtures to induce their voluntary submission, viz.: By confirming to those actually possessing and improving the lands, their titles under the grants of New Hampshire and Massachusetts Bay, and which had not been granted under New York, as well as the possession of those actually possessing and improving lands not granted by either of the three; in the latter case, to make, with other contiguous lands which were vacant, a farm not to exceed three hundred acres; and by confirming also the actual pos-

had two mortars and the same number of field-pieces. The expedition passed the Upper Fort in the Schoharie valley, before morning, unperceived, and laid siege to the Middle Fort, but meeting

session of lands under the grants of New Hampshire and Massachusetts Bay, and which had been subsequently regranted by New York, notwithstanding the posterior regrant; disclaiming, however, all determinations of title or possession that might "arise between different persons claiming under New Hampshire or Massachusetts Bay, or between persons claiming under New Hampshire on the one, and Massachusetts Bay on the other part, independent of any right or claim under New York," but that the Legislature of New York would provide for the determination of all such cases concerning the controverted lands aforesaid, as could not be decided by the aforesaid articles, according to justice and equity and not by strict rules of law. Quit rents under new grants or confirmations from New York, of lands heretofore granted by New Hampshire or Massachusetts Bay, were to be the same they were under the original grants; and a certain future commutation for quit rents was proposed. Finally, the overtures were to be of no avail to any person who should, "after the first day of May next, yield or acknowledge any allegiance or subjection to the pretended State of Vermont, the pretended government thereof, or to any power or authority pretended to be held or exercised thereunder."

Furthermore, that the Legislature of the State of New York would concur in all necessary measures to protect the loyal inhabitants of said State, residing in the counties of Albany, Charlotte, Cumberland and Gloucester, and to compel all persons residing within the State and refusing obedience to the government and Legislature thereof, to yield the obedience and allegiance due.

The Governor then commanded all persons within the State, at their peril, to take due notice of the proclamation and govern themselves accordingly.

On the 12th of March, 1778, the first election under the Constitution of Vermont, took place, resulting in the choice of Thomas Chittenden as Governor.

No sooner, however, had Vermont formed a government than she found herself involved in a dispute with New Hampshire.

The State of New Hampshire originally was composed of sundry grants from the Council of New England (formed of several of the prominent nobility of Great Britain, to whom, by that name, had been granted "all the land in America between the fortieth and forty-eighth north latitude," called New England) to John Mason, between 1621 and 1635, bounded by a line drawn sixty miles from the sea. Between that line and the Connecticut river the lands were Crown grants and annexed to New Hampshire by Crown commissioners.

On the aforesaid twelfth of March, sixteen towns east of the Connecticut river (and lying, of course, in the above territory) petitioned Vermont to be admitted within her union, on the ground that the above territory having been held by New Hampshire by virtue of Crown commissions, those commissions had been vacated by the assumed independency of the Colonies, and that, therefore, the inhabitants had, according to Congress, "reverted to a state of nature," and were at liberty to choose their own government.

with resistance from the American garrison there, abandoned the siege and marched down the valley, burning and destroying. They assaulted the Lower Fort, but being repulsed, continued

On the eleventh of the following June, the General Assembly of Vermont (after taking the sense of the people) admitted these towns, resolving further, that any other towns east of the Connecticut might be admitted, should a majority of the inhabitants so vote, or should they send a representative to the Vermont Assembly.

Mesheck Weare, President of the State of New Hampshire, thereupon addressed, on the nineteenth of August succeeding, by order of the Council and Assembly of his State, a letter to the New Hampshire Delegates in Congress, informing them of the action of the "pretended State of Vermont," relative to the sixteen towns; and also another letter, on the twenty-second following, to Governor Chittenden, claiming said towns as part of New Hampshire.

Ethan Allen was, on the receipt of this letter, dispatched by the Governor and Council of Vermont to Philadelphia, to ascertain the feeling of Congress as to the action of the State in the admission of the sixteen towns. Allen, on his return, reported that Congress was so opposed to said action that the recognition of Vermont itself as a State would not be made by that body should she persist in retaining the towns.

Accordingly, on the 21st of October, 1778, the General Assembly of Vermont refused to include the said towns in the county of Cumberland, or erect them into a county by themselves. Finding, by these and other indications, that Vermont was disposed to do nothing further to extend her jurisdiction to the east of the Connecticut river, the members from these sixteen towns, after a protest against the said action of the Assembly, and that they looked upon themselves "as being thereby discharged from any and every former confederation and association with the State," withdrew from the Assembly. They were followed by fifteen representatives from other towns in Vermont, adjoining the Connecticut, together with the Deputy Governor and two of the Council, all of whom had joined in the protest. These seceding members formed themselves immediately into a Convention, and invited the towns on both sides the Connecticut to unite and meet with them at Cornish, one of the sixteen towns. Accordingly, on the 9th of December following, the Cornish Convention met (eight towns only of Vermont, however, meeting with them), and in their proceedings disclosed what had been the ulterior intention of the leading men of the sixteen towns in proposing the union with Vermont. This intention was the formation of a government, either by connecting a considerable portion of New Hampshire with Vermont, or by breaking up the government of the latter, and connecting her with New Hampshire, with the seat of government upon the Connecticut river.

The latter project was upon the ground "that a large number of charters of incorporation of certain tracts of land were formerly issued from their Excellencies Benning Wentworth and John Wentworth, Esqs., in the name of the King of Great Britain, lying and being west of the Mason grant, and east of a north line drawn from the northwest corner of the now State of the Massachu-

downward, firing the dwellings and outhouses and destroying the fields of those attached to the American cause, until they reached the intersection of the valley with that of the Mohawk, and thence

setts Bay to Lake Champlain, and from thence to the latitude of forty-five degrees. That in the year 1764, the aforesaid King of Great Britain, in violation of his contract with the grantees, and in an arbitrary manner, passed a decree that there should be a division of the aforesaid grants between the Provinces of New York and New Hampshire, to which decree the inhabitants, of said grants were then, and have ever since been, averse; as they were thereby deprived of privileges which they, of right, claimed, and in their settlement reasonably expected, within the jurisdiction of New Hampshire."

Vermont, now awake to the danger of the union with these sixteen towns, on the 12th of February, 1779, dissolved the said union.

In view of the dissensions apparent in Vermont during the agitation of the above matter, New Hampshire, at this juncture, in pursuance of the intention manifested by the Cornish Convention, laid claim (June 25, 1779) to all the territory belonging to her before the Royal decree in 1764, viz., "to the jurisdiction of the whole of the New Hampshire Grants, so called, lying westward of the Connecticut river," in other words, to the whole of Vermont; referring the disputed matter to Congress; acquiescing, however, should Congress "allow the said Grants westward of the river to be a separate State, as now claimed by the inhabitants thereof, by the name of Vermont;" and furthermore, that New Hampshire would exercise jurisdiction as far west as the western bank of the Connecticut river, and no further," until the dispute should be settled by Congress.

At this period also, Massachusetts interposed a revived claim to the southern part of Vermont (decided against her by the British Privy Council in her territorial dispute with New Hampshire) viz., all within "a due west line from the junction of the two principal branches of the Merrimac."

The controversy between New York and Vermont began also to assume a most threatening aspect. A Military Association, to resist Vermont, appears at this period to have been formed among the friends to New York, in Cumberland county, and Governor Chittenden directed Ethan Allen to raise the Vermont Militia for its suppression. Colonel Patterson, acting in Cumberland county, under a commission from New York, wrote to Governor Clinton, May 5, 1779, for directions, suggesting that the Albany County Militia should be sent to his assistance. Everything betokened a speedy collision between the two great parties to the dispute, by military force.

On the 18th of May, 1779, therefore, Governor Clinton, in behalf of New York, applied to Congress to interpose and settle the difficulty.

The subject of both the New York and New Hampshire controversies came before Congress on the twenty-ninth succeeding; was referred to a committee of the whole, and on the first of June that body resolved to appoint a committee of five to repair to the New Hampshire Grants "and enquire why they refuse to continue citizens of the respective States which heretofore exercised jurisdiction over the said district," and also to "take every prudent measure

pursued their course up the latter valley devastating, until they reached Fort Plain.

On the tidings of the invasion at Albany, Governor Clinton and

to promote an amicable settlement of all differences and prevent divisions and animosities so prejudicial to the United States."

The next day Congress appointed Messrs. Ellsworth, Edwards, Witherspoon, Atlee and Root to be the said committee, with power to any three to act.

While Congress was engaged on this subject, Ethan Allen, at the head of an armed force, made prisoners of Colonel Patterson and the militia officers who were acting under the authority of New York.

This was communicated to Congress on the seventh of June, by Governor Clinton. That body resolved that the prisoners "ought to be immediately liberated."

Of the above committee appointed by Congress, two only attended, viz., Dr. Witherspoon and Mr. Atlee.

They repaired to Bennington in June, held conferences with the friends of Vermont and New York, and reported their proceedings July thirteenth to Congress; from those proceedings, however, it appeared they had not accomplished the object for which they had been sent.

On the second of October following Governor Clinton's application, Congress recommended to New York, New Hampshire and Massachusetts Bay to pass laws referring all controversy of jurisdiction over the Grants to that body to be heard and determined by commissioners or judges, to be appointed in the mode prescribed by the ninth article of the Articles of Confederation, specifying the 1st of February, 1780, for that purpose.

Upon the receipt of this recommendation, the General Assembly of Vermont resolved, on the 21st of October, 1779, that "this State ought to support their right to independence, at Congress and to the world, in the character of a free and independent State."

The Assembly also appointed five agents, they, or any three of them, to appear before Congress on the aforesaid first of February, to vindicate the right of Vermont to independence and agree upon articles of union with the United States.

New York, by a law passed October 21st 1779, and New Hampshire, by one passed in November of the same year, acquiesced to submit their respective claims, pursuant to the Federal recommendation. Massachusetts, however, passed no law. Vermont continued to deny the right of Congress to adjudicate upon the question of her independence, and published, on the 10th December, in the above year, "An Appeal to the candid and impartial world," written by Stephen R. Bradley, which declared that the liberties and privileges of the State of Vermont, by said resolutions of Congress, were to be suspended upon the arbitrament and final determination of that body, when in their opinion they were things too sacred ever to be arbitrated upon at all.

The subject matter, however, was not taken up by Congress on the 1st of February, 1780, and did not definitely engage their attention until the succeeding September.

Although Vermont denied to Congress the right of adjudication, Governor Chittenden nevertheless commissioned, on the 16th of August, Ira Allen and

General Robert Van Rensselaer, leading a large militia force, pressed forward in pursuit of Johnson, who was overtaken by Van Rensselaer at Klock's Field in Stone Arabia. After a warm

Stephen R. Bradley as agents to attend the Congressional proceedings at Philadelphia. The inhabitants of Cumberland county, by a convention of committees, appointed, on the thirtieth of the same month Luke Knoulton agent for the same purpose. The towns in the northern part of the Grants, on both sides of Connecticut river, had already, viz.: on the 1st of January, 1780, appointed two agents, Peter Olcott and Bezaleel Woodward, to attend the proceedings of Congress.

On the 19th, 20th, and 27th of the above month, of September, 1780, New York and New Hampshire stated to Congress their respective claims to the Grants. The decision, however, was on the twenty-seventh postponed. Allen and Bradley had declined to attend after the twentieth, and on the twenty-second had sent to Congress a remonstrance against the whole proceeding, reprobating "every idea of Congress sitting as a Court of Judicature to determine the dispute by virtue of authority given them by the act or acts of the State or States that make but one party," Vermont not having yielded her consent to the adjudication.

In 1780, a project was commenced by Lieutenant-General Sir Frederick Haldimand, Lieutenant-Governor of the Province of Quebec, and the government of Great Britain, to place Vermont as a separate Government under the British Crown. It was first broached by Colonel Beverley Robinson, in a letter dated New York, March thirtieth, in the above year, to Ethan Allen. Temptations were subsequently held out to Governor Chittenden, the said Allen, Ira Allen, Jonas Fay, John Fassett and others to enter into the project. A diplomatic correspondence was carried on between Haldimand, Great Britain and the above named persons, which displayed the most marked ability on the part of the last. By their skill in evading a positive determination of the question, the matter was continued until the peace of 1783 rendered the project hopeless. Whether the above named people of Vermont, stung by their supposed wrongs relative to the controversy, had entered into a really treasonable project, or were endeavoring to use Great Britain to the advantage of Vermont, in the avoidance, during its agitation, of all hostilities of the enemy against her, single-handed as she had been made by her unfortunate circumstances, has not been definitely ascertained. The better opinion, however, is to the latter.

In the meanwhile, Vermont, adopting the policy of New Hampshire and New York against her, extended a claim over a large part of the territories belonging to the two. She initiated measures on the 14th of February, 1781, whereby, on the fifth of April succeeding, a union of the grants east and west of the Connecticut river was consummated between her and the Cornish Convention, representing the several towns east of the Connecticut.

By this arrangement, thirty-four towns in New Hampshire, of which number, twelve had been included in the union of 1778, were annexed to Vermont.

At a session of the General Assembly in April, thirty-five representatives from the grants east of the Connecticut were received by Vermont as members.

contest Johnson was defeated, but escaped with his force by way of Oswego into Canada.

Subsequently, in the same year, learning that a marauding

Directly after the consummation of this Eastern Union, the attention of Vermont was directed to perfecting one at the west, embracing a portion of New York. This was effected, on the sixteenth of the following May, by the Cambridge Convention (in which twelve districts, within the jurisdiction of New York, were represented) and a committee of the Vermont Assembly (the arrangement sanctioned by the Assembly, June sixteenth) whereby a territory north of a line extended from the north boundary of Massachusetts west to Hudson river, and between that river and the west line of Vermont, was annexed to the latter.

On the twenty-second of the same month, Vermont sent agents to Congress to negotiate her admission into the Union. Congress, on the twentieth August, prescribed, as a preliminary, the former's relinquishment of the territory acquired by the union of April and May. Although Vermont refused at first to comply, she at length, on the 22d February, 1782, acquiesced in the condition, resolving that "the west bank of Connecticut river and a line beginning at the north-west corner of the Massachusetts State, thence northward twenty miles east of Hudson's river," to her western limits before the Cambridge Union, should be considered as the east and west boundaries of the State. Congress nevertheless, on the matter coming before them on the 17th April, 1782, again postponed it, in effect indefinitely.

Several years then passed with nothing done in the premises. It was not until 1789 that the controversy assumed an aspect of drawing to a close.

On the fourteenth July of that year, the Legislature of New York passed an act appointing certain commissioners to declare the consent of the State "that such district or territory within the jurisdiction, and in the northeastern and northern parts thereof, as the said commissioners should judge most convenient, should be formed and erected into a new State." It was provided, however, that nothing in the said act should be construed "to give any person claiming lands in such district, so to be erected into an independent State, any right to any compensation whatsoever from this State."

Vermont, on her part, on the twenty-third October following, appointed Isaac Tichenor, Stephen R. Bradley, Nathaniel Chipman, Elijah Paine, Ira Allen, Stephen Jacob and Israel Smith commissioners to meet with those of New York relative to the settlement of the controversy.

To supply certain omissions in the act of July fourteenth, the Legislature of New York on the 6th of March, 1790, passed another act repealing the former and appointing Robert Yates, Robert R. Livingston, John Lansing, Jr., Gulian Verplanck Simeon De Witt, Egbert Benson, Richard Sill and Melancton Smith commissioners. The only point of difficulty, at the assembling of the commissioners of the two States, related to compensation for the lands claimed by the New York grantees and which had been regranted by Vermont. After two or three meetings, however, the New York commissioners on the 7th of October, 1790, declared the consent of their State for the admission of Vermont into the Union, and that immediately upon such admission all claims of jurisdiction of

party had debarked at Crown Point, on Lake Champlain, for another incursion into the Mohawk valley, Governor Clinton marched with a strong force to the former place to cut off the retreat of the invaders, who escaped only by an Indian stratagem.

In 1780, Mr. Clinton was reelected Governor of the State, and again in 1783; both times without opposition.

On the twenty-fifth of November, in the latter year, he entered the city of New York on its evacuation by the British, side by side with Washington, heading a civic and military procession.

Shortly after the evacuation, a British officer, who had been seized by the Whigs of the city, was about to be tarred and feath-

the State of New York within the State of Vermont should cease, and henceforth the perpetual boundary line between the two should be the west lines of the most western towns which had been granted by New Hampshire, and the middle channel of Lake Champlain.

It was agreed, also, on the part of New York, that if the Legislature of Vermont should declare, on or before the 1st of January, 1792, that on or before the 1st of June, 1794, Vermont should pay \$30,000 to New York, that immediately from such declaration all rights and titles within the State of Vermont, under grants from New York, should cease, those excepted which had been made to confirm the grants of New Hampshire.

On the 28th of October, 1790, the Legislature of Vermont directed the said sum of \$30,000 to be paid New York at the time proposed, adopting as the perpetual boundary between the two States, the western lines and the middle of Champlain, and declaring all the New York grants void, except the confirmatory grants aforesaid.

Thus terminated this famous controversy, after a stormy existence of twenty-six years, (as dated from 1764) during which the territory in dispute had been overlaid with conflicting grants under New York and Vermont, and on both sides great hostility of feeling excited, and deeds of violence perpetrated.

On the 6th of January, 1791, the Vermont Convention, to take into consideration the expediency of entering the Union, assembled at Bennington. On the tenth they ratified the Federal Constitution, and on the eighteenth February following, Congress resolved "that on the 4th day of March, 1791, the said State, by the name and style of 'the State of Vermont,' should be received and admitted into this Union as a new and entire member of the United States of America."

On the 6th of April, 1795, the New York Legislature appointed Robert Yates, John Lansing, Jr., and Abraham Van Vechten Commissioners to decide the claims of the New York grantees to the lands situated in, and ceded by New York to Vermont and determine the amount each claimant should receive of the \$30,000.

The sum was divided among seventy-six claimants; and on the 23d of April, 1799, the commissioners reported their proceedings to the Legislature of New York.

ered, after having been placed in a cart for that purpose. Governor Clinton came to the rescue with his sword, and at the hazard of his life saved the victim.

In 1784, Mr. Clinton became a member of the Board of Regents of the University, by virtue of his office as Governor.¹

In 1786, he was again elected Governor without opposition.

In the early part of 1787, a number of the Insurgents participating in Shay's rebellion of that and the preceding year having, after the dispersion of the main force by General Lincoln in Massachusetts, concentrated at Lebanon, New York, for further hostilities, Governor Clinton, though not invested with specific power, called out the militia of the State and dispersed them.

On the 17th of July, 1787, he was appointed the first Chancellor of the second Board of Regents, of which he was also, ex-officio, a member.

¹ The first Board of Regents of the University was created by an act made by the Legislature, pursuant to a recommendation of Governor Clinton in his message on the 1st of May, 1784, granting additional powers to King's (then changed to Columbia) College in the city of New York. The Board consisted of twenty-four members, with the addition of the Governor and Lieutenant-Governor of the State, the Speaker of the Assembly, the Mayors of New York and Albany, the Secretary of State and the Attorney-General, by virtue of their offices. One clergyman was also to be chosen to the Board by each religious denomination in the State. No such appointments, however, it is supposed, were ever made.

On the twelfth of November following, by an act passed on that day, thirty-three additional Regents were appointed.

The above acts proving defective, on the 13th of April, 1787, through the exertions of Alexander Hamilton, James Duane, Ezra L'Hommedieu and others, the Legislature of New York passed an act creating the present Board of Regents to consist of twenty-one members, including, ex-officio, the Governor and Lieutenant-Governor. On the 8th of April, 1842, the Secretary of State, by virtue of his office, was added. The State Superintendent of Public Instruction was further added, by an act of the Legislature passed on the 30th of March, 1854. The Board now therefore consists of twenty-three members. Its officers are a Chancellor, a Vice-Chancellor and a Secretary. It has seven standing committees elected by the Board yearly, viz., on the Incorporation of Colleges and Academies, State Library, Appropriations for purchase of Books and Apparatus, Cabinet of Natural History, System of Meteorological Observations, Instruction of Common School Teachers, and Annual Report and Distribution of Literature and United States Deposit Funds. The Regents receive no salary or other compensation for their services, neither are their travel fees or other expenses paid. The Secretary receives a salary.

In April, 1788, a desperate riot broke out in the city of New York known as the "Doctors' Mob" occasioned by violations of the grave by persons of the medical profession.

For two days Governor Clinton went among the mob to restore quiet, but being unsuccessful he at last called out the militia and ended it.

In 1788, he was president of the State Convention which, assembling (agreeably to a resolution of the Legislature passed February first in that year) at Poughkeepsie June seventeenth and ending July twenty-sixth, ratified the Constitution of the United States.

In 1789, he was once more elected to the Governorship over the first opponent for the office he had ever encountered, viz., Robert Yates.

In accordance with Governor Clinton's recommendations, lands in that year were by legislative acts set apart in the new townships and other places for the promotion of Literature and the support of Common Schools.

In his annual address, on the 5th of January, 1791, he recommended the organization of a society for the promotion of agriculture, arts and manufactures, and an act was passed accordingly. Pursuant to his recommendation an act was also passed "concerning roads and inland navigation," directing the Commissioners of the Land Office to cause the lands between the Mohawk river and Wood creek, in Herkimer county, and between the Hudson river and Wood creek, in Washington county, to be explored, and estimates made of the probable expense of constructing canals between these points.

In the winter of 1792, the Legislature, on receiving the report of the above commissioners communicating the practicability of the object, and a strong appeal from Governor Clinton on its importance, passed acts creating the northern and western Inland Lock Navigation Companies; the germs of our system of Internal Improvements.

In 1792 Mr. Clinton was again made Governor, his opponent being John Jay.¹

¹ At this election nearly seventeen thousand votes were cast, of which Mr Jay received the majority. Six Senators and six Assemblymen, chosen by their

His administration during this period of office was not specially marked by any event except a controversy between him and the Council of Appointment relative to the power of nomination to office; he, as Governor, claiming the exclusive right of such nomination.¹

respective houses, composed the canvassing committee. Objections were made, on their assembling, to the votes of Otsego, Tioga and Clinton counties being received, on account of alleged informalities. Rufus King and Aaron Burr, the two United States Senators from this State, were selected as referees on the subject, but they did not concur in opinion. The majority of the canvassers then decided to reject the above votes, and Mr. Clinton received the certificate of election, being declared elected by a majority of one hundred and eight.

It was subsequently ascertained that illegal votes had been cast for Mr. Jay in Otsego county, and that high official personages there had, by use of their authority, as well as by threats and intimidations (unknown however to Mr. Jay), induced individuals who would have supported Mr. Clinton to vote for his antagonist.

¹ The Council of Appointment was created by section twenty-third of the Constitution of 1777. The Assembly, once in each year, openly nominated and appointed a Senator from each of the four districts (southern, middle, eastern and western) to form the Council. The Governor Lieutenant-Governor or President of the Senate (when they respectively administered the Government) was the President of the Council, having a casting voice, but no other vote, and with the advice and consent of the Council, appointed all officers other than those who, by the Constitution, were directed to be otherwise appointed. A majority of the Council formed a quorum, and the Senators were not eligible to the said Council for two years successively.

The Council for attendance during the recess of the Legislature were entitled to the like allowance per day and for traveling as was allowed to members of the Legislature. They also had a messenger and doorkeeper, paid by the State, and the Secretary of State for the time being was, ex-officio, clerk of the Council, exercising his office in person, or by his sworn deputy.

On all nominations or appointment to office within the State by the Council, the order or orders of the same thereupon were directed to be entered on the minutes of their proceedings, which were declared public records of the State, and to be subscribed by such majority of the Council as should agree to each respective order; whereupon the clerk of the said Council was directed forthwith to cause commissions to be made out agreeably to such orders and delivered to the Governor to be sealed.

Doubts were entertained at first as to the length of each member's tenure of office, but at length it became established that the members of the Council held their office for a full year from the date of their appointment, although their duties as Senators had expired within the year.

Their meetings were held from time to time, the Governor possessing the sole power of convening the Council.

On the 22d of January, 1795, Mr. Clinton, in an address to the freeholders of the State, declined being a candidate for the Governorship at the ensuing election, stating that for nearly thirty

Up to 1794, the Governor exercised the sole power of nomination, although doubts had arisen previously as to this power, but on the twenty-ninth of January in the above year, the Council, claiming concurrent power, nominated (the Governor, George Clinton, declining to do so) Egbert Benson as a puisne Judge of the Supreme Court of the State, and by a majority of three appointed him. Governor Clinton formally protested against the proceeding, insisting on his sole right as Governor to nominate, but took no further action in the premises.

The succeeding Governor (John Jay) submitted the question as to the right of nomination to the Legislature, in his first address on the 6th of January, 1796, but that body did not act upon the subject. On the 24th of February, 1801, on the nomination, by Governor Jay, of a number of persons as sheriffs of several counties in the State, the Council openly arrayed themselves against the right of sole nomination by the Governor. They negatived several of his nominations, and at length, on the nomination of John Nicholson, by the Governor, as sheriff of Orange county, the members of the Council (except one) explicitly refused to vote, and one of the members proceeding to nominate another person for the office, the Council was adjourned. On the twenty-sixth, the Governor addressed a special message to the Legislature, narrating the circumstances and referring to it the settlement of the question. A report on behalf of the Council, signed by Robert Roseboom, Ambrose Spencer and De Witt Clinton, was, on the seventeenth of the following month, submitted to the Assembly.* Although the Senate, on the seventh preceding, had passed a resolution that a joint committee of both houses be appointed to consider the question of the Governor's right to exclusive nomination in the Council, no definitive action was taken by the Legislature. That body, however, on the sixth of April following, passed a law calling a Convention, having for its specific object, in addition to that of altering the Constitution respecting the number of Senators and Members of Assembly, with power to reduce and limit the same, to determine the relative powers of the Governor and Council of Appointment in originating nominations for office.

The Convention assembled in 1801 (October 13th) and declared the Council to have equal powers of nomination with the Governor.

The patronage of this Council was enormous. All military, civil and judicial officers (except those specially excepted by the Constitution) were appointed by it, and at its abolishment, eight thousand two hundred and eighty-seven military, and six thousand six hundred and sixty-three civil officers held their commissions from it, and in most instances at will.†

At first the Council entertained charges against their appointees in presence of the accused, with reference to the truth of the charges, but at length its proceedings became summary.

* Assembly Journal New York for 1800, 1801, pp. 122, 123 and 198-201.

† Hough's Civil List.

years successively he had held elective offices, and that he desired now a retirement from public life.

In 1800 he was a member of the Assembly (twenty-fourth session) from the city and county of New York.

In the spring of 1801 he was elected Governor for the last time, over Stephen Van Rensselaer.

On the 15th of February, 1802, he was reappointed Chancellor of the Regents of the University.

On the 15th of February, 1805, he was elected Vice-President of the United States.

In 1808 he was reelected to the same office, and while in that office, on the 20th of April, 1812, he died at Washington, aged seventy-three years.

Mr. Clinton was prepossessing in his appearance; his stature moderate but massive. His demeanor was dignified, and his countenance indicative of courage, decision and energy. He possessed frankness and amiability in private life; was kind and affectionate in his personal relations, warm in his friendship and decided in his enmity. His patriotism was undoubted, and from first to last he was trusted by Washington. His boldness and decision of character are illustrated in the events of his life, and by none more than by the necessary exercise of his authority in the impressment of a large quantity of flour at a period when Washington's army was on the eve of dissolution, and was thereby saved.¹

Mr. Clinton married Cornelia Tappen, daughter of Christopher Tappen, of Kingston, Ulster county, New York, by whom he had one son and five daughters.

The Council was at last abolished by the Convention of 1821, without a dissenting voice, it having existed about forty-four years.

Its journals are contained in fourteen MSS. volumes, deposited in the Secretary of State's office, civil and military offices being entered, after 1798, in separate volumes.

¹ Life of Clinton, by Jenkins.

JOHN JAY,

SON OF PETER JAY,

Was born in the city of New York, on the 12th of December, 1745.

In 1760 he entered Kings College,¹ and graduated thence on the 15th May, 1764, when he delivered the Latin salutatory, the highest collegiate honor.²

About the first of the following June, he entered the law office of Benjamin Kissam, in the above city; was admitted to the bar in 1768, and became a partner of Robert R. Livingston, afterward Chancellor of the State. About this latter period, Mr. Jay was secretary of the commissioners to settle the disputed boundary line between the Colonies of New York and Nova Caesarea or New Jersey.³

In 1774 he was one of a committee of fifty, called the Committee of Correspondence, appointed by a meeting of citizens held in the city of New York, on the 16th May, of that year, on intelligence of the act (known as the Boston Port Bill) shutting up the harbor of Boston and removing the seat of government to Salem, having passed the British Parliament. The committee was chosen to correspond with the sister Colonies, and Mr. Jay prepared the draft of a letter (answering one from the Boston committee), in which was the first suggestion of a general congress from the Colonies. On the following twenty-eighth of July, he was appointed a Delegate from New York to the first Continental Congress, and on the fifth of the next September joined that body.

¹ Incorporated October 1st, 1754. The first stone of the building was laid by the then Governor under the Crown, Sir Charles Hardy, August 23d, 1756. On the 1st of May, 1784, the name was changed to Columbia College.

² Life of John Jay, by his son, William Jay, vol. 1, 15. Dunlap, however, in his history of New York (vol. 2 Appendix, 191) states that Richard Harrison delivered the Salutatory, and John Jay a dissertation on the Blessings of Peace.

³ These Commissioners were appointed by George III in 1767. The line was determined by them October 7th, 1769, and confirmed February 16th, 1771.

On the following day Congress appointed a committee to state the rights of the Colonies in general, the several instances in which those rights were violated or infringed, and the means most proper to be pursued for obtaining a restoration of them.

Mr. Jay was made a member of this committee, and on the eleventh of October, of a committee to draft a memorial to the people of British America, and an address to the people of Great Britain. Mr. Jay (the youngest member of the House, as is supposed) was elected by the committee, consisting, besides himself, of Richard Henry Lee and Mr. Livingston, to prepare the address. He withdrew from his regular lodgings into the private room of a tavern, and there drew up that masterly effort which Thomas Jefferson, while still in ignorance as to the author, has characterized as proceeding from "the finest pen in America."¹ It was reported to the House on the nineteenth, and on the twenty-first, after a few immaterial amendments, was adopted.²

After a session of about six weeks, this important body (numbering among its members, besides Mr. Jay, George Washington, Patrick Henry and Roger Sherman) finally adjourned, after recommending that another Congress be held at Philadelphia on the tenth of May following, unless a redress of grievances should in the meanwhile be obtained.

On his return to the city of New York, Mr. Jay was, on the eighteenth of November, elected by the citizens upon a Committee of Observation, composed of sixty members. This committee had been recommended by the New York Committee of Correspondence (which thereupon dissolved), in pursuance of a recommendation by Congress for the appointment of town and county committees to carry into effect its agreement to the non-importation and non-consumption of British goods, one of the results of which was the destruction of the tea in Boston harbor.

The Committee of Observation recommended a Provincial Convention, of deputies from all the counties of the Province, which accordingly assembled on the 20th of April, 1775. Mr. Jay was a deputy from the city of New York to this Convention, and was chosen by it a delegate to the second Congress.

¹ Jefferson's Works, vol. 1, 8.

² Journal of Congress, 1774, pp. 23, 57, 78.

The above committee, proving too limited in its powers for the exigencies of the times, suggested the election of a larger committee clothed with general powers, and also (to the exertion of an authority recognized and respected throughout the Colony, any committee, however extended in its powers, being at the best local) a Provincial Congress of deputies from every county. Both suggestions were adopted. On the twenty-eighth of April a "Committee of Association" of one hundred members were appointed by the citizens of New York, with undefined powers. Mr. Jay was chosen one of the committee. Two of its objects were, to provide for the safety of the city and to enforce the measures proposed by Congress to obstruct the commerce of the mother country with her Colonies.

On the fifth of May a letter was issued by the committee to the Lord Mayor and Common Council of London, praying their interposition and aid for the redress of the wrongs of the Colonies, and declaring "that Americans will not be deceived by conciliatory assurances while it is evident that the ministers were aiming at a solid revenue to be raised by acts of Parliament;" and further, that "the minions of power in New York may inform the administration that this city (of New York) was as one man in the cause of liberty." Mr. Jay's name was signed (next to the chairman's Mr. Low) to this letter.

Previous to this letter (the Provincial Congress not having yet assembled), the above committee had called on the citizens to arm themselves, and ordered the militia to patrol the streets at night, to prevent provisions from being exported.

On the tenth of May, the General Congress assembled at Philadelphia. A redress of grievances had only previously been contemplated, but now (hostilities having been commenced at Lexington and Concord) the question of separation was seriously considered. Congress ordered an army to be raised, and subsequently during the session established rules and regulations for a navy. An address to the people of Canada, written by Mr. Jay, was adopted, and he was placed upon a committee which, on the sixth of July, published a declaration "setting forth the causes and necessity" of the Colonies taking up arms. On his motion a committee was appointed which reported a second petition to the

King (written by John Dickinson of Pennsylvania), and which, on the eighth, Congress individually signed. During the session a second address to the people of Great Britain was adopted, as well as an address to fellow-subjects of Jamaica and Ireland. Mr. Jay was the author of the latter address.

Reconciliation with Great Britain now appeared hopeless, and Congress initiated more active measures. The city of New York being much exposed to attack, Congress recommended that the militia there should be disciplined and held liable to active service at any moment. The New York Provincial Congress followed the recommendation. It tendered, in November, 1775, a commission of Colonel of the second regiment of militia of foot of the city to Mr. Jay, which he accepted. He did not, however, join his regiment, as his presence was required in Congress.

On the twenty-ninth of the above named month, Congress appointed him on the Committee of Secret Correspondence, to correspond "with the friends in America, in Great Britain, Ireland and other parts of the world."

The Colony of New York, swarming with loyalists, particularly on Long Island, was regarded by Congress with great anxiety. Queens county had not only refused to be represented in the Provincial Congress, but had declared itself neutral. A committee was accordingly appointed, upon which Mr. Jay was placed, to take into consideration the state of the Colony. A report was made, exhibiting distinctive indications of his authorship, and recommending that the loyalists of Queens county "should not be permitted to travel or abide beyond the limits of the county;" also, that twelve hundred men from New Jersey and Connecticut should be marched there and disarm those disaffected to the American cause, and arrest individuals specified. The report was accompanied by resolutions, both of which were adopted by Congress.

Mr. Jay was likewise appointed on a committee for preparing a declaration to explain the reasons justifying the letting loose of privateers upon British commerce, that being a most assailable point of the enemy. This declaration was adopted by Congress March 23d, 1776.

In the following April, while still in Congress, Mr. Jay was elected to the third New York Provincial Congress.

He left the Congress at Philadelphia, and on the twenty-fifth of May, joined the Provincial Congress at the city of New York; where, on the fourteenth preceding, it had convened.

The General Congress had, four days previous to the fourteenth, recommended to the Assemblies and Conventions of the United Colonies, where no government sufficient to the exigencies of their affairs had been hitherto established, to adopt one that best conduced to the happiness and safety of such Colonies.

On the thirty-first of May, a committee, of which Mr. Jay was a member, reported in the Provincial Congress resolutions that the electors of the several counties in the Colony authorize either the present deputies or deputies to a new Congress, to establish a State Government; they were adopted, and the ninth of July selected for a new Congress to assemble.

Meanwhile, the present Provincial Congress continued in session. On the twenty-ninth of June, Lord Howe appeared with his forces off the harbor of New York. The Congress, apprehensive the city would be attacked, directed that all the lead from the windows and leaden weights (except the small weights used in trade) of the city be taken for use by the troops; and on the thirtieth, after ordering that the lead, powder and other military stores of the State be removed from the city of New York to White Plains, Westchester county, adjourned.

On the ninth of July, the new Provincial Congress was convened at White Plains. To it, also, Mr. Jay had been appointed a delegate. The same day this body assembled, the Declaration of Independence of the second Continental Congress (inclosed in a letter from the New York Delegates) was received and read. Mr. Jay was appointed chairman of a committee upon the subject, and reported on that day resolutions (unanimously adopted), the first of which was, "That the reasons assigned by the Continental Congress for declaring the United Colonies free and independent States are cogent and conclusive; and that, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other Colonies in supporting it."¹

¹ Journal Provincial Convention, 1, 520.

On the following day the Provincial Congress changed its name to the "Convention of Representatives of the State of New York."

The next effort of Mr. Jay shows his opposition to the encroachment of power, in whatever shape it appeared. The General Congress having passed a resolution for a regiment to be raised in the State of New York, the New York Convention referred the matter to a committee to arrange for the providing of officers who had served in Canada. Congress, however, itself nominated the officers, and explained its reason for so doing to the Convention. The latter's answer to the former's communication, and dated the eleventh July, was written by Mr. Jay. In it he freely criticised and took ground against the action of that body, remarking in the course of the answer, "We are extremely sorry to inform the Congress that the good of the service will not be promoted, nor the danger of delay prevented by the measures which they have taken."¹

On the sixteenth July, Mr. Jay was associated with Robert Yates, Christopher Tappen, Robert R. Livingston, Gilbert Livingston and William Paulding, on a secret committee for obstructing the channel of the Hudson river, or annoying the vessels belonging to Lord Howe's fleet in their navigation up the said river. Mr. Jay was clothed with authority to "impress carriages, teams, sloops and horses, and call out detachments of militia" in the execution of his duties upon the committee. Twenty cannon were, by his exertions, transported from Salisbury, Connecticut, to West Point, he repairing to the former place for that purpose.

On the same day (the 16th) he introduced a resolution into the Convention to punish with death, as guilty of high treason, all persons, members of or owing allegiance to this State, who should levy war within the same, or adhere to the cause of the King.

On the first of August he was appointed chairman of a committee of twelve, consisting, beside himself, of John Sloss Hobart, William Smith, William Duer, Gouverneur Morris, Robert R. Livingston, John Broome, John Morin Scott, Abraham Yates, Henry Wisner Sr., Samuel Townshend, Charles De Witt and Robert Yates, to "take into consideration and report a plan for

¹ Journal Provincial Congress, 1, 205.

instituting and framing a form of government," and also "to prepare and report at the same time, a bill of rights, ascertaining and declaring the essential rights and privileges of the good people of this State, as the foundation for such form of government."¹

The Convention, on the twenty-ninth following, adjourned to Harlem; thence on the fifth September to Fishkill, the members supplying themselves with arms and ammunition, to repel any attack of the British upon them during their deliberations. On the 19th February, 1777, they adjourned to Kingston, where they remained until their dissolution, May 13th, 1777.

On the 5th of September, 1776, (a few days before Lord Howe entered, with his troops, the city of New York) the Convention, by resolution, authorized General Washington to cause all the bells in the churches and public edifices of the city to be transported to Newark (New Jersey), to be converted into cannon.

On the twenty-first of September following, Mr. Jay was placed by the Convention on a committee (William Duer, Charles De Witt, Leonard Gansevoort, Zephaniah Platt and Nathaniel Sackett being associated thereon) for inquiring into, detecting and defeating all conspiracies which might be formed in this State against the liberties of America.

This committee were empowered to send for persons and papers; to call out such detachments of the militia or troops in the different counties as they might from time to time deem necessary for suppressing insurrection; to apprehend, secure or remove such persons as they should judge dangerous to the safety of the State; to make drafts on the treasury for a sum not exceeding five hundred pounds; to raise, if necessary, officer and put under pay any number of men not exceeding two hundred and twenty, officers included, station them at such places and employ them in such services as they should judge expedient for the public safety; and to enjoin secrecy upon their own members, and the persons employed by the committee whenever they should judge the same necessary; in general, to do every act and thing whatsoever which might be necessary to enable them to execute the trust reposed in them.²

¹ Journal New York Provincial Convention, 1, 552.

² Journal Provincial Convention, 1, 638, 639.

Of this committee, clothed with such enormous powers, Mr. Jay acted as the chairman, and drew a preamble and resolutions relative to those inhabitants of the State professing to owe allegiance to the King, and refusing to join their countrymen, and asking that the said committee be empowered to disfranchise and punish them by transportation into the British lines, "that they who ignominiously prefer servitude to freedom, may, by becoming vassals and slaves to the King and Parliament, deter others from the like shameful and dishonorable conduct."²

On the twenty-eighth of September, Mr. Jay was placed upon the committee, appointed by the Convention, relative to the New Hampshire Grants, particularly Cumberland county, receding from New York.

The aspect of American affairs was now threatening. British troops occupied the city of New York, Staten and Long Islands; their vessels commanded Long Island sound and a portion of the Hudson. Westchester county had been evacuated by the American army; the northern campaign against Canada had failed; and Washington, with only three thousand strong, almost without clothing, was making his New Jersey retreat before overwhelming force.

In such a crisis, Mr. Jay drew the address of the Convention (signed by A. Ten Broeck, as its President, and adopted December 23d, 1776) to the inhabitants of New York, inciting them to boldness in the defense and vindication of their rights and liberties against the enemy.

On the 12th of March, 1777, the committee appointed, on the 1st August, 1776, to form a plan of government, reported the instrument known as the first Constitution of the State of New York. It was adopted by the Convention on the twentieth of the following April. It was prepared by Mr. Jay. A few days previous to its adoption he was summoned to Fishkill to attend his dying mother, and was not present on its final action. He regretted the hurry of its conclusion, objected to the additions made during his absence, and complained of the omissions, among them a direction for every officer of the government to swear allegiance to it, renouncing all allegiance to foreign powers, ecclesiastical as

² Life and Correspondence of John Jay, by Wm. Jay, 1, p. 49, 50.

well as civil, and a clause against the continuance of domestic slavery.¹

On the 15th April, 1777, Mr. Jay was one of a committee of three of the Convention (viz., Messrs. Gouverneur Morris, Jay and John Sloss Hobart) to devise the first great seal of the State.²

The seal was adopted by act of March 16, 1778, and continued until, by act of January 26, 1798, a new one was prepared.

On the twentieth of April, immediately after the adoption of the State Constitution by the Convention, Mr. Jay was appointed one of a committee of six (viz., Robert R. Livingston, John Morin Scott, Gouverneur Morris, Abraham Yates, Mr. Jay and John Sloss Hobart), "to prepare and report a plan for organizing and establishing the Government agreed to by the Convention."

The plan prepared by the Committee was adopted by the Convention May 8th, 1777. It provided for "a Council of Safety invested with all the powers necessary for the safety and preservation of the State, until a meeting of the Legislature," to carry the Constitution of the State into effect;³ and also for the appointment of certain officers to administer the affairs of the said State under the direction of the Council during the interim. Mr. Jay was

¹ Life of Jay, by Jay, 1, 69. Allen's American Biographical Dictionary (Life of Jay).

² The following is a description of this seal: A rising sun; motto, *EXCELSIOR*; legend, *THE GREAT SEAL OF THE STATE OF NEW YORK*. On the reverse, a rock in the ocean; legend, *FRUSTRA*."

There have been two other great seals of the State. The second one is described as follows: "The arms of the State complete, with supporters, crest and motto; around the same *THE GREAT SEAL OF THE STATE OF NEW YORK*. On the reverse, a rock, and waves beating against it; motto, *FRUSTRA*, above; 1798, below."

The date of the third and present one is 1809. The following is its description: "Argent; a rising sun proper; crest in a wreath; a demi-globe, and an eagle passant, regardant, all proper; supporters, the figure of Justice on the dexter, and Liberty on the sinister side; motto, *EXCELSIOR*; legend, *THE GREAT SEAL OF THE STATE OF NEW YORK*."

The first two were pendant; the last recumbent.

Hough's Civil List, p. 427.

³ The Legislature met for the first time at Kingston, the Assembly on the 1st of September, and the Senate on the 9th, 1777; the session ending October 7th, 1778, dispersed by the approach of the British expedition under Wallace and Vaughan.

named in the plan as one of the members of the Council, and so appointed.

On the third of May he was elected, and on the eighth appointed by the Convention, the First Chief Justice of the Supreme Court of the State of New York, as one of the aforesaid officers mentioned in the plan.

On the seventeenth of October he was commissioned as such Chief Justice by the Council of Appointment, under the Constitution of the State; made effective by the Legislature, whose first meeting was on the tenth of September preceding.

Meanwhile he had received the thanks of the Convention for long and faithful services as a delegate, rendered in the Continental Congress, to the Colony and State of New York.¹

On the 4th of November, 1778, he was elected, with reference to the Vermont controversy, a special delegate (without vacating his Chief Justiceship) to the Congress of 1778, under the Articles of Confederation, and so continued till October 15, 1779. He joined that body on the seventh of December following, and on the tenth (his predecessor Henry Laurens having resigned) was chosen its president. While such, he prepared a circular letter to the States, dated September 13th, 1779, urging the furnishing the required funds for the prosecution of the war.

In September, 1779, he resigned his office of Chief Justice, and on the first of October following was elected one of the five delegates of the State to the Congress of the Confederation.

On the twenty-seventh of September preceding, however, he was appointed Envoy to Spain, to negotiate for the free navigation of the Mississippi, for a loan of \$5,000,000, and the recognition of American Independence. On the twentieth of October, he left in the United States Frigate Confederacy upon his mission, Brockholst Livingston accompanying him as his private secretary.

The frigate, losing her masts in a tempest, proceeded to Martinique, and he did not reach Madrid until the 4th of April, 1780.

Spain, being unwilling to accede the free navigation of the Mississippi to the United States, the time passed without any favorable issue to the objects of the mission. On the eleventh of the

¹ Journal of New York Convention, 1, 931.

following July, however, he received instructions from Congress to yield the point of difficulty. He submitted to the Spanish Minister the plan of a treaty, one of its articles relinquishing the claim of the United States to the free navigation of the above river; but at this period the appointment reached him from Congress as a commissioner to conclude a peace between the United States and Great Britain. His associate commissioners were Franklin, Jefferson, John Adams and Henry Laurens.

On the twenty-third of June Mr. Jay arrived in Paris, and preliminary articles, drawn by him, were signed at that city by the United States Commissioners, and Richard Oswald on the part of Great Britain, on the 30th November, 1782.¹ On the 3d of September, 1783, the definitive Treaty of Peace with Great Britain, signed at the same city by David Hartley (Mr. Oswald's successor), on the part of that power, and by John Adams, Benjamin Franklin and Mr. Jay, on the part of the United States, was concluded.

Spain, after the preliminary articles with Great Britain were signed, invited Mr. Jay to resume negotiations at Madrid, but he declined.

On the first of May preceding the signing of the definitive treaty, Congress had appointed him, with Benjamin Franklin and John Adams, to negotiate also with Great Britain a treaty of commerce; but, declining the appointment, he, after the signing of the said treaty, passed the winter in Paris in private pursuit, and in the following May left for home.

While in Paris, viz., on the 3d of February, 1784, he was reappointed a delegate to Congress.

On the 12th of July, 1784, Mr. Jay returned to the city of New York, which honored him with a public reception, presenting him, in a gold box, with the freedom of the city.

¹ "Mr. Adams came in October, about a month before the signature, though he was in correspondence with his colleagues during their preliminary negotiations. Mr. Laurens, who had been for over a year à prisoner in the tower of London, arrived only to indorse what his colleagues had done. Mr. Jefferson never acted under his appointment to negotiate the treaty for peace, but remained in America, as he learned that the preliminaries were arranged before he was ready to embark. As Dr. Franklin, for several weeks during the summer of 1782, was confined to his house by sickness, the negotiations were conducted by Mr. Jay and Mr. Oswald, the English Ambassador or Agent." *Weld's Life of Franklin*, 520.

On the seventh of May preceding his return, Congress had elected him Secretary for Foreign Affairs to succeed Robert R. Livingston, and while he was yet undetermined on accepting the office, he, on the 26th of October, 1784, was chosen once more a delegate to Congress.

It assembled on the first of November at Trenton, but on the twenty-third of December adjourned to the city of New York, where it continued to meet till the adoption of the Federal Constitution reported by the Philadelphia Convention on the 17th September, 1787.

The establishment of the seat of government at the place of his residence decided Mr Jay's acceptance of the Secretaryship of Foreign Affairs. He consequently entered upon its duties.

In 1784, by the act of November 12th, he was appointed one of the thirty-two Regents of the University, additional to those appointed by the act of May preceding, granting new powers to King's (then changed to Columbia) College.

On the same day he was chosen, by an act of the Legislature of the State of New York, one of the agents of said State with reference to the controversy between it and Massachusetts as to their conflicting claims to the lands within the present limits of New York. Mr. Jay and Walter Livingston, another of the agents, resigned in 1786, and four others were substituted.¹

Early in 1785, a society was formed in the city of New York, for promoting the manumission of slaves. Mr. Jay was elected the President (having on the 21st of March, 1784, manumitted the only negro slave he possessed), and so continued until his appointment to the Chief Justiceship of the United States Supreme Court.

In the summer of this year Congress appointed Mr. Jay to treat with the Spanish Minister, Don Diego Guardoqui, sent by the King of Spain to open friendly relations with the United States. The negotiations were carried on in the city of New York, but no treaty was made, the free navigation of the Mississippi interposing, as heretofore, a difficulty not to be obviated.

In a letter from Mr. Jay to the President of Congress, dated October 13th, 1785, communicating the declaration of war by the

¹ For a history of this whole matter, see note to the Biography of Robert R. Livingston.

Algerines against the United States, as well as in a report on that subject made by him as Secretary of Foreign Affairs to Congress, are to be found the first propositions for a navy made since the independence of the country.

On the 13th October, 1786, Mr. Jay prepared an elaborate report on the relations between Great Britain and the United States.

In 1787, by the act of April 13th, he was appointed one of the second and permanent Board of Regents; and on the 17th of July following was chosen Vice-Chancellor of the Board.

About this period and the succeeding autumn and winter, he wrote the second, third, fourth and fifth numbers of the *Federalist* (the first number of which, written by Hamilton, appeared on the 27th October, 1787). After the fifth number, his labors upon the work were interrupted by a wound received during the prevalence of a riot in the city of New York called the "Doctors' Mob," in April, 1788. Mr. Jay was struck upon the head and leveled to the earth by a missile, while defending, with Hamilton, sword in hand, the jail of the city from the attack of the populace.

He wrote, however, subsequently, the sixty-fourth number of the work, on the treaty-making power; and published also, but without his name, an address to the people of New York in support of the Federal Constitution.

In April, 1788, he was elected, from the city of New York, a member of the Convention of that year, which ratified (July 26th) the Constitution of the United States, and he offered (July 11th) the resolution by which it was ratified. He was also chosen to draft the circular letter to the States, urging their adoption of the amendments which the Convention had proposed to the Constitution.

On the 26th of September, 1789, he was appointed by Washington, Chief Justice of the Supreme Court of the United States, and as the court was not fully organized till April 3d, 1790, he, at the request of the President, officiated as Secretary of State till the arrival from France of Jefferson in the spring of that year.

In the aforesaid month of April he commenced his duties as Chief Justice; holding, on the fourth day, in the city of New York, the first Circuit Court of the United States held in the State.

In 1792 (April) he was a candidate for the Governorship of New York, but the certificate of election was awarded to his competitor, George Clinton.

On the 16th of April, 1794, he was nominated, and soon after confirmed, as Special Envoy to England relative to that country's alleged violations of the treaty of 1783. Without resigning his office of Chief Justice, he left for England on the twelfth of May following, and on the nineteenth of the next November concluded what is known as the Jay Treaty.¹

On the 28th of May, 1795, he returned to the United States. In the preceding April he had been elected Governor of the State of New York over Robert Yates, and having resigned his office of Chief Justice, on the 1st of July he was sworn into the gubernatorial office.

One of his first acts as Governor was a proclamation recommending Thursday, the 26th of November, 1795, as a day of public thanksgiving. He recommended it only, as he considered the question whether the Governor had power to appoint a day and to require an observance of it, more proper for the Legislature than him to decide.* The recommendation, however, did not meet with general favor, and it was not repeated.

He also recommended the Legislature to mitigate the Criminal Code; establish institutions for the employment and reformation of criminals; laws for more strictly observing the Sabbath, and a plan of internal improvement for facilitating and multiplying the means of intercourse between different parts of the State.

The Legislature, in conformity with these suggestions, passed a law (in 1796) mitigating the Code, and made provision (1797) for the erection of the first State prison in the State, at the city of New York, criminals having been previously confined in the jails of the counties in which their conviction had taken place.

On the 18th of January, 1796, an intimate friend of the Governor (James Watson, Member of the Assembly from New York

¹ Notwithstanding the partisan clamor of those friendly to France, this treaty was highly advantageous to the United States. It obtained payment for British spoiliations amounting to \$10,345,000; stipulated for the surrender of the northwestern posts held by the British, and procured admission for our vessels into the West Indies.

² See *Life of Jay*, by Wm. Jay, 1, 386.

city and county) brought in a bill for the gradual abolition of slavery. It was defeated in the House. In 1797, a bill for the same was introduced in the Senate, which was also defeated. The next year a like bill passed the House, but the Senate rejected it. In 1799, however (at the regular session next ensuing the reëlection of Mr. Jay as Governor, he having called an extra session, on the second of August preceding, relative to the threatening relations of the United States government with France), another like bill passed both Houses, the Senate by a majority of ten, and the Assembly of thirty-six.

On the 20th of January, 1796, Governor Jay was appointed Chancellor of the Regents of the University.

In 1798 he was reëlected Governor over Robert R. Livingston.

On the 10th December, 1800, he was again appointed by the President (John Adams) and Senate, Chief Justice of the United States Supreme Court, but declined the office.

In May, 1801, he retired to Bedford, Westchester county, New York.

In 1821, he was elected President of the American Bible Society, on the decease of Elias Boudinot, and continued in that office till 1828, when he resigned.

On the 17th day of May, 1829, he died at Bedford, in the eighty-fourth year of his age.

Mr. Jay was nearly six feet in height, slender and well formed in person, but somewhat stooping. His complexion was colorless; he had black piercing eyes, an aquiline nose and pointed chin. The expression of his countenance was amiable;¹ he was kind, charitable and generous in his private relations, of unimpeached integrity and unaffected piety.²

In 1774, Mr. Jay was married to Sarah Livingston, daughter of William Livingston, Governor of New Jersey, by whom he had six children, two sons and four daughters, one of whom died in infancy.

ADDRESSES, ETC., OF JOHN JAY.

Address to the people of Great Britain.

Address to the people of Canada.

¹ Sullivan's Familiar Letters on Public Characters.

² Jenkins' Life of John Jay.

Address to the people of Jamaica and Ireland.

Address of New York Convention of 1776 to their constituents.

Draft of the New York State Constitution of 1776.

Circular Letter of Congress of 1779, to the States, for funds to prosecute the war.

Second, third, fourth, fifth and sixty-fourth numbers of The Federalist.

Address to the people of New York, on behalf of the Federal Constitution.

Circular Letter of New York Convention of 1778, to the State, on amendments to the Federal Constitution, proposed by the Convention.

Addresses to the American Bible Society in 1822, '23, '24, '25.

A Prayer.

Letters, Speeches as Governor, and a volume of Miscellaneous and Official Correspondence.

A pamphlet of Correspondence between himself and Hugh Littlepage, a native of Virginia, whom Mr. Jay, when in Spain, received into his family, at the request of Benjamin Lewis, uncle to Littlepage, but who subsequently turned against his benefactor, and died in 1802.

MORGAN LEWIS,

SON OF FRANCIS LEWIS,

Was born in the city of New York on the 16th of October, 1754. In 1773 he graduated at Princeton College, and commenced the study of the law in the office of John Jay. In 1774 he joined a volunteer company raised for military discipline, under the instruction of a soldier of Frederick the Great. This company furnished more than fifty officers to the Revolutionary army.

In June, 1775, a few days after the battle of Bunker Hill, he, as a volunteer in a rifle company, joined the American army before Boston, and shortly after was appointed to the captaincy of the volunteer company before mentioned.

On the twenty-fifth of August in the above year, he covered, with his company, a party of citizens engaged in removing the ordnance from the Battery Arsenal at the city of New York.

In the following month of November, the Provincial Congress organized into regiments the New York militia, and he was commissioned as first major in the second regiment of foot, of which John Jay was colonel. Mr. Jay not joining the regiment, from the pressure of his duties in the Continental Congress, the command devolved upon Mr. Lewis.

In June, 1776, he was made chief, with the rank of colonel, of General Gates' staff, and accompanied him to the northern frontier. On the return of the army from Canada, he was appointed Quarter-Master-General of the Northern Department, and continued till the close of the Revolution in that office.

He was present when Ticonderoga was evacuated by General St. Clair, and aided efficiently in the transportation of the munitions and supplies thence to the sprouts of the Mohawk.

On the 7th of October, 1777, at the second battle of Bemis Heights, General Lewis was in command of a party of videttes, close to the enemy's lines, and communicated every movement to General Gates.

At the capitulation of Burgoyne on the seventeenth of October, he conducted the British troops to the field of Fort Hardy, where they piled their arms, and thence through the line of the American forces, drawn up to witness the spectacle.

In the autumn of 1780, he accompanied the expedition of Governor George Clinton and General Robert Van Rensselaer against Sir John Johnson and the Indian Chief, Brandt; had command of the advance and was present at the head of his men in the successful engagement of Stone Arabia.

Subsequently, in the same year, he accompanied Governor Clinton and his expedition to Crown Point, to cut off the retreat of the invaders of the Mohawk valley.

At the close of the Revolution he was admitted to the bar, and commenced practice in the city of New York. He was appointed Colonel of a volunteer corps of militia, and as such, at the head of his men, escorted Washington on his first inauguration as President.

In 1784 he was appointed one of the additional Regents of the University, under the act of November twelfth of that year.

In 1789-90 he was a member of the New York Assembly (13th session) from the city of New York, and elected to the fifteenth session, of 1792, from the county of Dutchess, he in the interim having removed to that county.

He was appointed, about this period, one of the judges of the Dutchess Common Pleas.

On the 8th of November, 1791, he was appointed Attorney-General of the State of New York, on the resignation of Aaron Burr; on the 21st of December, 1792, was made a fourth Justice of the New York Supreme Court (the number of justices having been limited previous to this year to three) and on the 28th of October, 1801, Chief Justice.

In 1804 he was elected Governor of the State over Aaron Burr, and appointed Chancellor of the Board of Regents of the University, on the 4th of February, 1805.

On the 5th of February, 1805, Governor Lewis, in a special message to the Legislature, recommended that the proceeds of the public lands of the State, amounting to one and a half millions of acres, be exclusively appropriated to the purposes of education. An act was, on the second of the following April, accordingly passed, setting apart the net avails of the first five hundred thousand acres that should be sold, and three thousand shares of bank stock, as a fund for the use of common schools, to accumulate till the interest amounted to the sum of \$50,000 per annum; when that sum was to be annually distributed for the object in view, as the Legislature might direct. This act was the foundation of our present Common School Fund.

In 1807, Governor Lewis was a candidate for reelection, but was defeated by Daniel D. Tompkins.

In 1811, 1812, 1813 and 1814 he was a member of the New York Senate (34th, 35th, 36th and 37th sessions) from the middle district, and on January twenty-fifth of the latter year, was chosen to the Council of Appointment.

In May, 1812, he was appointed Quarter-Master-General of the United States army, with the rank of Brigadier-General, and in March, 1813, was made Major-General.

He accompanied General Dearborn to the Niagara frontier, and was present at the capture of Fort George. He was second in command to Wilkinson in the expedition down the St. Lawrence, and commanded at Chrystler's Field.

In 1814, he was appointed to the command of the forces destined to the defense of New York.

During the war he advanced and contributed about \$21,000 of his own private funds toward the objects connected with it; viz., upwards of \$14,000 advanced for the relief of the American prisoners in Canada, in the summer of 1812, and upwards of \$7,000 in remissions of rent to his tenants, serving in the company raised by General Leavenworth in the county of Delaware, at the commencement of the war.¹

In 1828, he was one of the Electors for President from the fifth district.

In 1835, he was elected President of the New York Historical Society, and in 1838 chosen presiding officer of the Cincinnati State Society, which office he held till his death.

He died in the city of New York, on the 7th of April, 1844, in the ninetieth year of his age.

In 1779, he was married to Gertrude Livingston, sister of Robert R. Livingston, by whom he had a large family.

Mr. Lewis was a gentleman of kind and courteous demeanor, and of scholarly attainments; amiable in private life, and of warm, active and effective patriotism.

DANIEL D. TOMPKINS,

SON OF JONATHAN G. TOMPKINS,

Was born in the present town of Scarsdale (formed in 1788), Westchester county, New York, on the 21st of June, 1774.

In 1795, he graduated at Columbia College, city of New York; in 1796, was admitted to the bar, and immediately commenced the practice of the law in said city.

¹ Jenkins' Life of Lewis.

In 1801, he was appointed a delegate from the city and county of New York to the State Convention of that year, which assembled at Albany, October thirteenth (ending October twenty-seventh), and altered the Constitution of the State relative to the Senate and Assembly, so as to fix the number of the former at thirty-two and the latter at one hundred, to be increased after each census, at the rate of two yearly, till it equaled one hundred and fifty. The members of the Council of Appointment were also declared to have equal powers of nomination to office with the Governor.

In 1803, Mr. Tompkins was a Member of the Assembly (26th session) from New York city and county.

In 1804, he was elected a Representative to the ninth Congress (1805-7) from the second and third Congressional districts, but did not take his seat, in consequence of his appointment, on the second of July in the above year, as Justice of the Supreme Court of the State of New York. He was then but thirty years of age.

In the April election of 1807, he was elected to the Governorship of the State, over Morgan Lewis, and (resigning his Justiceship) on the first of July following was inducted into the office.

In 1807, Albany became the seat of the State Government.

On the 3d of February, 1808, Governor Tompkins was chosen Chancellor of the Regents of the University, he being a member of the board by virtue of his office.

In his annual speech to the Legislature, at the commencement of the session, 30th January, 1810, he recommended encouragement, by legal enactments, to domestic manufactures, now springing up all over the Union, consequent upon the restrictive system adopted by Jefferson, and continued by Madison. He also called the legislative attention to the Common School Fund, and suggested carrying into immediate effect the law of 1805, establishing that fund.

In April, 1810, he was reelected Governor over Jonas Platt.

In his speech to the Legislature, at its commencement, on the 29th of January, 1811, he again urged encouragement of domestic manufactures, and attention to the Common School Fund. There

had been no distribution of revenue, nor organization of any system with regard to this fund since the passage of the act of 1805, but the subject being thus a second time called to their attention by the Governor, the Legislature, at this session, took steps to the above effect. A law was passed authorizing the Governor to appoint five commissioners to report to the Legislature a system for the establishment of common schools, and the distribution of the interest of the School Fund. The commissioners made their report on the 14th of February, 1812, and on the nineteenth of the following June, the last day of the prorogued session, an act was passed providing for the appointment of a superintendent,¹ and the organization of a system the same in substance as the one now in existence.

On the 27th of March, 1812, Governor Tompkins prorogued the Legislature till the twenty-first of May ensuing. This act grew out of the excitement consequent on the application for the charter of the Bank of America, and the reason for it, assigned by the Governor, was that he had been furnished with sufficient proof to show corruption, or an attempt at it, on the part of the applicants, of members of the Legislature.²

¹ Gideon Hawley, of Albany, was appointed by the Council of Appointment, and continued in the office until the 22d of February, 1821, when he was superseded by the said Council, and Welcome Esleek appointed in his place. Through the distinguished agency of Mr. Hawley, our present common school system was substantially created. In pursuance of his plan, the several enactments, with the amendments, relating to common schools, were, on the 12th of April, 1819, consolidated into one act. During the discussion of the bill in the Assembly, Mr. Hawley, according to the request of the members, took a seat on the floor of the House, and made verbal explanations of his objects in the details of his bill.

The removal of this able champion in the cause of common school education in this State, in 1821, was the direct cause of the abolishment of the office of superintendent, on the third of April of the above year, its duties being transferred to the Secretary of State (then J. V. N. Yates). The duties continued to be discharged by the Secretary of State until the 30th of March, 1854, when the office of State Superintendent of Public Instruction was created by an act of the Legislature and the common school system placed under his control.

² A large amount of capital having been rendered useless by the failure of the old United States Bank to obtain a recharter from the Congress of 1810-11, a scheme was proposed in this State to charter the said Bank of America, to be established in the city of New York.

On the 18th of June, 1812, Congress passed the act declaring war with Great Britain. Immediately after President Madison's proclamation, on the nineteenth, Governor Tompkins ordered out the militia of the State, and accepted the offers of volunteers. Where he had not power sufficient by law to protect the State and render assistance to the nation, he assumed it on his own responsibility, prudently though firmly. He collected, through his exertions, a large militia force on the Niagara frontiers, under General Van Rensselaer, in the summer of 1812, and at other points troops were stationed.

At the legislative session of 1813, Governor Tompkins recommended in his speech that a loan should be made, by the State to the Federal Government, for the prosecution of the war. The Senate passed a resolution to that effect, but the Assembly refused.

In the April election of 1813, Governor Tompkins was again elected Governor, this time over Stephen Van Rensselaer.

He still continued his exertions to carry on the war, and keep the State in an attitude of defense.

Governor Tompkins had, before the session of 1812, been informed of the scheme, and had, in his annual speech, on the twenty-eighth of January, to the Legislature, although in implied terms, denounced it.

Shortly after the commencement of the session an application was made to the Assembly for the charter. As an inducement for granting it, the petitioners offered the payment of a bonus to the State of \$600,000; \$400,000 of which were to be added to the Common School Fund; \$100,000 to the Literature Fund, and the remaining sum was to be paid into the Treasury at the expiration of twenty years from the date of the incorporating act, provided no other bank charter should in the meanwhile be granted.

It was proposed further to loan \$1,000,000 to the State, at five per cent, for canal construction, and the same amount at the usual rate of six per cent to the farmers.

The bill passed the Assembly; a vote in the Senate showed to a certainty it would pass that body, and hence the prorogation.

When the Legislature reconvened, on the twenty-first of May, the bill passed the Senate, the Council of Revision sanctioned it and the incorporation was thus granted.

At the legislative session of 1813, an application of the bank to be relieved from the bonus to the State, and reduce the amount of their capital, was granted in both particulars, with the exception of \$100,000, which was to be paid to the Common School Fund.

had been no distribution of revenue, nor organization of any system with regard to this fund since the passage of the act of 1805, but the subject being thus a second time called to their attention by the Governor, the Legislature, at this session, took steps to the above effect. A law was passed authorizing the Governor to appoint five commissioners to report to the Legislature a system for the establishment of common schools, and the distribution of the interest of the School Fund. The commissioners made their report on the 14th of February, 1812, and on the nineteenth of the following June, the last day of the prorogued session, an act was passed providing for the appointment of a superintendent,¹ and the organization of a system the same in substance as the one now in existence.

On the 27th of March, 1812, Governor Tompkins prorogued the Legislature till the twenty-first of May ensuing. This act grew out of the excitement consequent on the application for the charter of the Bank of America, and the reason for it, assigned by the Governor, was that he had been furnished with sufficient proof to show corruption, or an attempt at it, on the part of the applicants, of members of the Legislature.²

¹ Gideon Hawley, of Albany, was appointed by the Council of Appointment, and continued in the office until the 22d of February, 1821, when he was superseded by the said Council, and Welcome Esleek appointed in his place. Through the distinguished agency of Mr. Hawley, our present common school system was substantially created. In pursuance of his plan, the several enactments, with the amendments, relating to common schools, were, on the 12th of April, 1819, consolidated into one act. During the discussion of the bill in the Assembly, Mr. Hawley, according to the request of the members, took a seat on the floor of the House, and made verbal explanations of his objects in the details of his bill.

The removal of this able champion in the cause of common school education in this State, in 1821, was the direct cause of the abolishment of the office of superintendent, on the third of April of the above year, its duties being transferred to the Secretary of State (then J. V. N. Yates). The duties continued to be discharged by the Secretary of State until the 30th of March, 1854, when the office of State Superintendent of Public Instruction was created by an act of the Legislature and the common school system placed under his control.

² A large amount of capital having been rendered useless by the failure of the old United States Bank to obtain a recharter from the Congress of 1810-11, a scheme was proposed in this State to charter the said Bank of America, to be established in the city of New York.

On the 18th of June, 1812, Congress passed the act declaring war with Great Britain. Immediately after President Madison's proclamation, on the nineteenth, Governor Tompkins ordered out the militia of the State, and accepted the offers of volunteers. Where he had not power sufficient by law to protect the State and render assistance to the nation, he assumed it on his own responsibility, prudently though firmly. He collected, through his exertions, a large militia force on the Niagara frontiers, under General Van Rensselaer, in the summer of 1812, and at other points troops were stationed.

At the legislative session of 1813, Governor Tompkins recommended in his speech that a loan should be made, by the State to the Federal Government, for the prosecution of the war. The Senate passed a resolution to that effect, but the Assembly refused.

In the April election of 1813, Governor Tompkins was again elected Governor, this time over Stephen Van Rensselaer.

He still continued his exertions to carry on the war, and keep the State in an attitude of defense.

Governor Tompkins had, before the session of 1812, been informed of the scheme, and had, in his annual speech, on the twenty-eighth of January, to the Legislature, although in implied terms, denounced it.

Shortly after the commencement of the session an application was made to the Assembly for the charter. As an inducement for granting it, the petitioners offered the payment of a bonus to the State of \$600,000; \$400,000 of which were to be added to the Common School Fund; \$100,000 to the Literature Fund, and the remaining sum was to be paid into the Treasury at the expiration of twenty years from the date of the incorporating act, provided no other bank charter should in the meanwhile be granted.

It was proposed further to loan \$1,000,000 to the State, at five per cent, for canal construction, and the same amount at the usual rate of six per cent to the farmers.

The bill passed the Assembly; a vote in the Senate showed to a certainty it would pass that body, and hence the prorogation.

When the Legislature reconvened, on the twenty-first of May, the bill passed the Senate, the Council of Revision sanctioned it and the incorporation was thus granted.

At the legislative session of 1813, an application of the bank to be relieved from the bonus to the State, and reduce the amount of their capital, was granted in both particulars, with the exception of \$100,000, which was to be paid to the Common School Fund.

He recommended in his speech, to the Legislature, on the 25th of January, 1814 (with a detail of the events of the war), that the State should assume its quota of the direct tax Congress had authorized to be levied. This also was approved by the Senate but not concurred in by the Assembly. Other measures, likewise intended to aid the National Government, were passed by the Senate but lost in the House.

Still the Governor continued his exertions. The militia were directed by him to meet frequently for inspection and drill, and the officers to perfect as rapidly as possible the discipline of the men. He directed the State troops to be so disposed as to render aid at any point threatened by the enemy. Many of them at Chippewa and Niagara, under General Porter, rendered good service, and others were the foremost to join General Macomb.

The city of New York, in the summer of 1814, although defenses for it were in progress under General Morgan Lewis, was as yet insecure; and after the attack upon the city of Washington by the British troops, the apprehension throughout the summer was, that the first mentioned city would be the next point of attack. Federalists and Republicans, from the city and its neighborhood, appealed to Governor Tompkins, to exert his authority, and pledged themselves to sustain him if the public safety required him to transgress it. Colonel Willett, Colonel Rutgers, Governor Wolcott and Rufus King, among others, animated him, according to his statement in a letter to Archibald McIntyre, to the greatest efforts.¹

¹ Mr. King, Governor Tompkins narrates, said that "the time had arrived when every good citizen was bound to put his all at the requisition of the government; that he was ready to do this; that the people of the State of New York would and must hold him (the Governor) personally responsible for its safety." "What," added he in answer to the statement of the Governor, acquainting him with the difficulties under which he had struggled for the two preceding years, the instances in which he had been compelled to act without law or legislative indemnity, and that if he should once more exert himself to meet all the emergencies and pecuniary difficulties which were pressing, he would ruin himself. "What," said Mr. King, "is the ruin of an individual compared with the safety of the Republic. If you are ruined, you will have the consolation of enjoying the gratitude of your fellow-citizens; but you must trust to the magnanimity and justice of your country, you must transcend the law, you must save this city and State from the danger with which they are menaced, you must ruin yourself if it becomes necessary, and I pledge you my honor that I will support you in whatever you do."

Governor Tompkins had issued his proclamation for an extra session of the Legislature on the twenty-sixth of September, but he did not delay his own exertions. On his personal responsibility, he raised a considerable amount of money and expended it in supplies for the troops, and completing the defenses of New York. Militia in large bodies, from the counties along the Hudson, were ordered to the city until an army of between ten and fifteen thousand men were there concentrated. The Governor, by virtue of a temporary appointment as a Major-General in the United States army, assumed the command of this force; but the enemy, after the capture of Washington, was repulsed at Baltimore, the threatened attack passed away, and the alarm at New York ceased.

In the meantime, Governor Tompkins had been offered by President Madison the post of Secretary of State of the United States, but he declined it.

On the twenty-sixth of September the Legislature convened in extra session, according to the proclamation.

In his speech, the Governor chiefly confined himself to the war, recommending various measures for prosecuting it. Laws were passed increasing the pay of the militia while in the United States service, for the encouragement of privateering, for classifying the militia so as to place at the disposal of the national government a force of twelve thousand men, enlisted for two years, for a corps of sea fencibles to defend the city of New York, for reimbursement to the Governor of expenditures made on his own responsibility, and for completing the Staten Island fortifications.

In January, 1815, at the annual legislative session, Governor Tompkins, in his speech, proposed further measures for the prosecution of the war; but early in the month of February tidings were received that peace had been concluded between the two countries by the treaty at Ghent, December 24th, 1814.

During the war, internal improvement was suspended in the State. In April, 1816, the law authorizing the commissioners for the improvement of the internal navigation of the State (passed June 19, 1812), to borrow \$5,000,000 was repealed; but at the conclusion of the war, the friends of the canal enterprise, to connect the Hudson with the western lakes and Lake Champlain, renewed their efforts.

In his speech to the Legislature of 1816, Governor Tompkins said it would rest with them to say "whether the prospect of connecting the waters of the Hudson with those of the western lakes and of Champlain is not sufficiently important to demand the appropriation of some part of the revenues of the State to its accomplishment, without imposing too great a burden upon our constituents."

Governor Tompkins, by his noble and patriotic course during the war, was now at the height of popularity. The Republican party rejoiced in the "farmer's boy of Westchester," as the Governor was popularly called.

In February, 1816, he was unanimously nominated, by the Republicans of the New York Legislature, to the Presidency of the United States. The congressional caucus at Washington, on the eighteenth of the following March, however, nominated to the Presidency Mr. Monroe, and Governor Tompkins to the Vice-Presidency.

Before the result of the congressional caucus was known at Albany, Mr. Tompkins was again nominated to the governorship, and in April, 1816, he was for the fourth time elected; this time over Rufus King. John Tayler was elected Lieutenant-Governor.

On the 6th of April, 1816, the Governor accepted the nomination to the Vice-Presidency of the United States, and in the following December was elected to that office.

He continued to discharge his duties as Governor until the 24th of February, 1817, and on the preceding twenty-seventh of January sent a special message to the Legislature, urgently recommending the entire abolition of domestic slavery in the State, to take place on the 4th of July, 1827. A law was accordingly passed on the 31st of March, 1817, to the above effect.

On the said twenty-fourth of February, he resigned the Governorship, and Lieutenant-Governor John Tayler acted as Governor from that date till the first of the following July, when De Witt Clinton, having been, at the preceding April election (authorized by special act to supply the vacancy occasioned by the resignation of Tompkins), elected Governor, took the oath of office.

On the 4th of March, 1817, Mr. Tompkins was sworn in the office of Vice-President.

In the April election of the State of New York in 1820, Mr. Tompkins was again a candidate for the governorship, but was defeated by De Witt Clinton.

In December, 1820, he was reëlected to the Vice-Presidency, the office to take effect from the 4th of March, 1821.

In 1821, he was a delegate from Richmond county, New York, to the Convention that formed the second State Constitution (assembling at Albany, August 28th, and adjourning November 10th) and was chosen its president.

In the meanwhile he continued to discharge his duties as Vice-President of the United States, till the 3d of March, 1825, when he retired into private life at Tompkinsville, Staten Island, New York; where, on the 11th of June, 1825, he died, aged fifty-one years.

Mr. Tompkins possessed a very popular address and conciliating manner. He had the art, in the most eminent degree, of ingratiating himself with the people, never forgetting the name or face of a person with whom he had once conversed.¹

He was dignified and prepossessing in his personal appearance, with a form above the ordinary height.²

He was married to the daughter of Mangle Minthorne about 1797, and had by her several children.

¹ Renwick's *Life of De Witt Clinton*, p. 66.

² Jenkins' *Life of Tompkins*.

DE WITT CLINTON,

SON OF GENERAL JAMES CLINTON,

Was born at New Windsor on the 2d day of March, 1769. He entered Columbia College in the spring of 1784, and graduated at that institution in 1786, at the head of his class. He shortly after entered as a student of law, the office of Samuel Jones, subsequently Comptroller of the State.

Mr. Clinton was an attentive observer of the Convention of 1788, which ratified the Federal Constitution, attending from day to day as a spectator, and communicating a report of its proceedings and speeches for publication in a New York journal.

In 1789 he became the Private Secretary of his uncle, Gov. George Clinton, in place of his brother Alexander, who died while holding that post.

On the 21st of January, 1794, he was made Secretary of the Board of Regents of the University, and, as such, drew the report in favor of the incorporation of Union College, containing "the earliest official recommendation of the establishment of schools by the Legislature, for the common branches of education."¹ He was also Secretary of the Board of Fortifications.

In 1795, he was admitted to the bar, and commenced the practice of his profession in the city of New York.

He was a member of the New York Assembly, from the city of New York, in the sessions of 1798-9, 1800-1 and 1802; and a State Senator in the sessions of 1806, 1807, and 1808-9, from the southern district.

On the 7th November, 1800, he was placed upon the Council of Appointment, and in 1801 was a delegate from Queens county to the Convention of that year.

On the 9th of February, 1802, Mr. Clinton was appointed to fill a vacancy in the Senate of the United States, caused by the resig-

Account of the first Semi-Centennial Anniversary of Union College, in 1845, p. 112. *Note.*

nation of John Armstrong. In 1803 he resigned his senatorship, in consequence of his appointment as Mayor of the city of New York, on the eleventh October of that year, succeeding Edward Livingston. In 1806, January 31st, he was again chosen to the Council of Appointment.

In the winter of 1807, he was removed from the Mayoralty, but on the 8th February, 1808, was reappointed, and on the 11th of the same month was made one of the Regents of the University.

In 1810 he was again removed from the Mayoralty, but on the 5th of February, 1811, was reappointed.

In the winter of 1810 he was appointed by the Legislature, on motion of Jonas Platt, one of seven commissioners (the others being Gouverneur Morris, Stephen Van Rensselaer, Simeon De Witt, William North, Thomas Eddy and Peter B. Porter) to explore the whole route for inland navigation, from the Hudson river to Lakes Ontario and Erie. In the following summer, the commissioners made a survey of the region, Mr. Clinton keeping a journal of his tour.

The commissioners made their report (drawn by Gouverneur Morris) to the Legislature of 1811, which, by an act prepared by Mr. Clinton, authorized the said commissioners, with Robert R. Livingston and Robert Fulton added to the commission, to consider all matters relative to the inland navigation of the State, and make application to Congress, and the States and Territories for aid in furtherance of the object. Mr. Clinton and Gouverneur Morris visited the city of Washington as a sub-committee for the above purpose of aid, but met with no success or encouragement.

In April, 1811, he was elected Lieutenant-Governor over his competitor, Nicholas Fish, the Federal candidate (a vacancy having happened in August of the preceding year, by the decease of John Broome, the then incumbent), notwithstanding the opposition of the Martling men (or Madisonian Republicans) in the city of New York, as well as the Federal party, Mr. Clinton being the leader of the Republican party of the State.

In the Presidential election of 1812, he was the candidate of the peace party for the Presidency, but was defeated by Mr. Madison, the former receiving eighty-nine electoral votes, and the latter one hundred and twenty-eight.

In 1814, having been created a Major-General of militia, he made known to Governor Tompkins, through a friend, his wish to be employed in active service, to which the Governor promised to accede, provided the city of New York should be attacked.

In January, 1815, he was again removed from the office of Mayor, and Jacob Radcliff appointed in his place.

In 1816 (February 21st), he presented a memorial, drawn by him (previously submitted to and adopted by a large meeting in the city of New York, composed of its most influential citizens), to the Legislature, for the construction of the Erie and Champlain canals, and a law was accordingly passed for the appointment of five Canal Commissioners to make surveys and estimates of the expense, and ascertain if loans could be made on the State credit. Mr. Clinton was appointed one of the commissioners, with Stephen Van Rensselaer, Samuel Young, Myron Holley and Joseph Ellicott as associates. The reports of the commissioners, written in whole or in part by Mr. Clinton, were presented in February, 1817, to the Legislature, and in the following April a law was enacted authorizing the construction of the canals to be commenced.

In 1817, Mr. Clinton was elected Governor of the State of New York over Peter B. Porter, at a special election (occasioned by the resignation of Governor Tompkins, he having been chosen Vice-President of the United States), took the oath of office on the first of July, and in the autumn of that year issued his proclamation, recommending the thirteenth of November, ensuing, as a day of thanksgiving and prayer. The day was generally observed by the people; he thus introducing the custom subsequently followed to the present time.

On the 6th of January, 1819, he recommended, in his annual speech to the Legislature, that the entire line of canal navigation from the Hudson river to Lake Erie should be opened, as well as from the head of sloop navigation to Fort Edward, on the above river. This was recommended on account of the Canal Commissioners, by the act of 1817, being authorized to construct canals only between the Mohawk and Seneca rivers and between Fort Edward and Lake Champlain.

The Legislature of 1820 passed resolutions opposed to the admission of any new slave States in the Union, which were cordially approved by Governor Clinton.

In April, 1820, he was reëlected Governor, over Daniel D. Tompkins; and in November recommended the choice of electors by the people by general ballot. In that month the Legislature at their extra session passed an act for a State Convention, but as there was no provision for the submission of the question as to calling one to the people, the bill was lost in the Council of Revision, Governor Clinton giving the casting vote against it. In the winter of 1821, a new law for a Convention was passed, providing for the above submission at the ensuing April election, which the Council, including the Governor, approved. At this election the people decided to call a Convention; in June following delegates to it were chosen, and in August ensuing the Convention assembled.

On the 1st of January, 1823, Governor Clinton was succeeded in the office of Governor by Joseph C. Yates, chosen over Solomon Southwick, in the preceding November election. He still, however, retained the office of Canal Commissioner, but was removed from that by his political opponents in the spring of 1824.

In this year he was again elected Governor, Samuel Young being his antagonist. In his message, on the 4th of January, 1825, he enlarged on the subject of internal improvements, advised among other things the creation of a board for such matters, an extensive canal system, and an amendment of the Constitution, by rendering citizenship, full age and competent residence the only requisite qualifications for the right of suffrage.

In February following he was offered the English Embassy by President Adams which he however declined.

On the twenty-sixth of October, in the same year (the Erie Canal being in readiness), Governor Clinton, accompanied by Lieutenant-Governor James Tallmadge and committees from the city of New York and villages along the line of the Canal, embarked from Buffalo on board the canal boat "The Seneca Chief," followed by three other boats, "The Perry," "Superior" and "Buffalo," and, heralded by a signal fire of cannon stationed from point to point (so that in one hour and twenty minutes the citizens of New York were apprized of the departure from Buffalo), proceeded amid rejoicings, addresses and bonfires to Albany. Thence he continued to New York and, accompanied by a fleet, three miles in circumference, of boats and steamers, sailed to Sandy Hook;

where, from the deck of a vessel, with an appropriate address, he poured a keg of water brought from Lake Erie into the Atlantic.

In 1825 and 1826, he recommended that a State road should be constructed, through the southwestern tier of counties, from the Hudson river to Lake Erie.

In 1826 he was once more elected Governor, this time over William B. Rochester.

In his annual message in 1827, he again recommended internal improvements extensively, a speedy extinguishment of the public debt and a remodeling of the banking system.

On the 1st of January, 1828, he sent to the Legislature his last message. In it he advised additional internal improvements once more, and the encouragement of domestic manufactures; enlarged upon the agricultural condition and resources of the State and upon common schools, recommending that schools for the instruction of teachers should be established in every county town.

On the 11th of February, 1828, he died (almost instantaneously) of a disease of the heart, at his house in Albany, in the fifty-ninth year of his age.

He was president of the New York Free School Society, of the Academy of Fine Arts and of the New York Literary and Philosophical Society, and an honorary member of the Linnean and Horticultural Societies of London.

Under his auspices, the New York Historical Society, of which he was one of the incorporators, and the Academy of Arts were incorporated; the City Hall in the city of New York was founded, the Orphan Asylum in said city established, and the harbor and city were provided with defenses.

Mr. Clinton possessed a fine personal appearance, was large and stately in frame, with finely moulded features, a broad, full forehead and penetrating eye.

His industry was great, and although at first his manners appeared cold, they upon closer approach warmed into sociality, while his conversation was pleasing and instructive. His feelings were strong, but kind, and he was generous to a fault.

He was twice married, the first wife being Maria Franklin, daughter of Walter Franklin, by whom he had seven sons and

three daughters. His second wife was Catherine Jones, daughter of Dr. Thomas Jones.

Besides his qualifications as a statesman, Mr. Clinton was a profound scholar and an elegant writer. Independently of his speeches, decisions in the Court of Errors, messages and other State papers, he was the author of the following, viz.:

Speech in the United States Senate on the Mississippi Question, February 23, 1803.

Address before the Free School Society of the city of New York, December 11, 1809.

Private Canal Journal from June 30th to August 22d, 1810, as one of the Commissioners to explore between the Lakes and the Hudson, and report to the Legislature the best route for a water communication.

Address on the Iroquois before the New York Historical Society, December 6, 1811.

Introductory Discourse before the Literary and Philosophical Society of New York, May 4, 1814; with copious notes and illustrations.

Remarks on the Fishes of the Western Waters of New York, February 1, 1815.

Discourse before the American Academy of the Arts, October 23, 1816.

Memoir on the Antiquities of the Western parts of the State of New York, October 7, 1817.

The Canal Policy of New York, in a letter to R. Troup. By Tacitus. Albany, 1821.

Letter on the Natural History and Internal Resources of the State of New York. By Hibernicus. New York, 1822.

Account of the Otsego Basse, May 16, 1822; and

Remarks on the Passenger Pigeon, April 24, 1823.

Address before the New York Alpha of the Phi Beta Kappa of Union College, July 22, 1823.

Description of a new species of Fish in the Hudson, 1823, and Remarks on the *Hirundo fulvia*, of Vieillot, 1824.

Addresses before the American Bible Society, 1825, 1827.

Address to the Alumni of Columbia College, May 3, 1827.

JOSEPH C. YATES,

SON OF COLONEL CHRISTOPHER YATES,

Was born in the then village of Schenectady, on the 9th of November, 1768.

He was first under the tuition of Jacob Wilkie, a tutor in the family of his father, for several years, and then under that of Rev. Dr. Romeyn, at Caughnawaga, where he remained until the incursions of Brandt and the Johnsons (Sir Guy and Sir John) rendered a residence there unsafe. Returning to Schenectady, he, after studying with Rev. Alexander Miller, completed his education under John Honeywood.

He then entered the office of Peter W. Yates, in the city of Albany as a student at law, was admitted to the bar, and commenced practice at Schenectady.

The subject of our notice was one of the founders of Union College, and also one of its first trustees under the Charter of the College granted by the Regents of the University in 1795.

By the act of March 26th, 1798, Schenectady was incorporated a city, and on the 31st of the same month Mr. Yates was chosen its first mayor, holding the office until 1808.

In the years 1806 and 1807 he was a member of the State Senate (29th and 30th sessions) from the eastern district.

He was appointed on the 3d. of April, 1807, by the Legislature, on a commission consisting, besides himself, of Ezra L'Homme-dieu, Samuel Jones, Egbert Benson and Simeon De Witt, to meet and confer in behalf of the State, with commissioners appointed by New Jersey, relative to certain claims of jurisdiction and territory made by the latter as to the extension of its eastern boundary.¹

In 1808 Mr. Yates was elected from the eastern district to the Senate (31st session) but vacated his seat on his appointment, on the 8th of February in that year, to the Justiceship of the Supreme Court of the State of New York.

¹ 5 Webster & Skinner's Laws of New York, 124.

On the 28th of February, 1812, he was chosen a Regent of the University.

In 1812 he was chairman of the Presidential (Clintonian) Electors, chosen by the Senate and Assembly November ninth.

In November, 1822, he was elected Governor of the State over Solomon Southwick, a self-nominated candidate. He resigned his office of Justice of the Supreme Court, and on the 1st of January, 1823, took the oath of office as Governor.

In his written message (now for the first time substituted for the oral speeches hitherto annually made by the Governors to the two legislative branches at the commencement of the session), January 1st, 1823, he recommended to the Legislature laws for carrying the new (second) Constitution into effect, the encouragement of domestic manufactures, and economy in the public expenditures relative to the works of internal improvement now being rapidly completed.

The question of allowing the people the choice of Presidential Electors instead of the Legislature, had been agitated in the State of New York, pending the canvass for President, in 1820 (which resulted in the reelection of James Monroe) and it affected the fall election of the State in 1823.

Governor Yates, in his message of 1824 (January 6th), made mention of the electoral question, the purport of which was that he desired a change in the manner of choosing Presidential Electors, but that it should be general throughout the country, looking to Congress for the remedy, and that, in the meantime, the interference of the Legislature, or the surrender of their right to choose the electors was not advisable. He again recommended encouragement of domestic manufactures by duties on foreign imported goods, and that the statutes of the States should be revised.

A discussion was had in the Legislature relative to a change in the State electoral law (which law, as before intimated, vested the choice of the Presidential Electors in the Legislature), and a bill authorizing the people to choose the electors by general ticket, passed the Assembly, but by a majority instead of a plurality, as was desired by "the people's party" (the original friends of the measure). The Senate, however, disposed of the matter by postponing its further consideration to the first Monday in the follow-

ing November, on which day the law required the Legislature to meet for the purpose of choosing Presidential electors.

On the 2d of June, 1824, Governor Yates issued his proclamation for an extra session of the Legislature, with reference to the electoral question; to convene on the second of August following. The Legislature assembled, but after a session of four days adjourned without transacting any business.

In 1825 (January), at the expiration of his term of office, Governor Yates retired into private life at Schenectady.

In 1828 he was president of the Electoral College chosen by districts November 4th, in accordance with the electoral law passed at the second meeting of the Legislature, commencing 11th September, 1827, Andrew Jackson being chosen President of the United States.

Mr. Yates died at Schenectady, on the 19th of March, 1837, in the 69th year of his age.

He was, in person, above the ordinary size; was dignified in appearance, easy and courteous in manner, and unassuming in deportment.

He was thrice married. His first wife was Mrs. Anne Ellis of Schenectady; his second was Maria Kane of Albany, and his third was Ann Elizabeth Delancey. He had three daughters; one by his second wife and two by his last.

JOHN TAYLER,

(LIEUTENANT-GOVERNOR.)

SON OF JOHN TAYLER,

Was born in the city of New York, on the 4th of July, 1742.

In 1759, he removed to the city of Albany, and with some adventitious means procured military stores, and removed to Lake George to supply the British garrison there established. In this business he was very successful, winning the esteem of many of the officers.

In the next year he followed the army to Oswego in the same business, and there acquired a knowledge of the Indian language which subsequently proved highly serviceable.

On the return of the troops to Lake George, he also returned, still pursuing his occupation until 1771.

Some time after this period he removed to Stillwater, Saratoga county, New York, purchased a small farm and remained there until 1773. He then returned to Albany and engaged in the mercantile business.

Early in the Revolution, Mr. Tayler was intrusted by General Philip Schuyler, then commandant of the northern department, with an important service to Canada.

In 1776 he was appointed a deputy, from the city and county of Albany, to the third New York Provincial Congress, and in the same year was also a deputy, from the same city and county, to the New York Convention of Representatives.

He was a member, from the city and county of Albany, of the first Assembly of the State of New York, in 1777-8; of the second in 1778-9; of the fourth in 1780-1; of the ninth in 1786, and tenth in 1787.

In 1793, September 30th, he was appointed Recorder of the city of Albany, and on the 17th of February, 1797, First Judge of the County Court of Albany county.

In 1802, he was a member, from the eastern district, of the New York Senate, the session commencing on the twenty-ninth of January, and ending on the following sixth of April.

On the first of February of the above year, he was appointed a Regent of the University.

He was likewise a member of the New York Senate, from the eastern district, from 1804 to 1812-13, a period of nine consecutive years.

On the 29th of January, 1811, he was chosen President of the Senate (34th session) in the place of Lieutenant-Governor John Broome, who died in the preceding August.

In 1813, at the April election, he was elected Lieutenant-Governor of the State, on the same ticket with Daniel D. Tompkins, elected Governor; and from the 24th of February, 1817, on the entrance of Governor Tompkins upon the duties of the Vice-Presidency of the United States, until the first of July following, when De Witt Clinton commenced his Governorship (to which he had been elected in the April previous) Lieutenant-Governor Tayler acted as Governor.

He continued Lieutenant-Governor until 1822.

On the 14th of March, 1814, he was appointed Vice-Chancellor of the Board of Regents of the University, and Chancellor of the same board on the 3d of February, 1817.

In 1824, Mr. Tayler was appointed a Presidential Elector in place of Ebenezer Sage, who did not attend, and on the 4th of November, 1828, he was elected a Presidential Elector at large.

On the 19th of March, 1829, he died at his residence in Albany.

In 1771, he married Margaret Van Valkenburgh, of the above city. He had no children, but adopted the daughter of his wife's sister, who married Doctor Charles D. Cooper, of the same city.

Mr. Tayler was tall, vigorous and rather thin in person; accessible and companionable in his manners and conversation.

CHANCELLORS.

ROBERT R. LIVINGSTON,

SON OF ROBERT R. LIVINGSTON (ONE OF THE NEW YORK COLONIAL JUSTICES OF THE SUPREME COURT),

Was born in the city of New York, on the 27th of November, 1747.

In 1764, he graduated at King's College, and in 1765, entered upon the study of the law in his native city, under the direction of William Smith, historian of the Colony.¹

Mr. Livingston also studied with William Livingston, Governor of New Jersey.²

In October, 1773, he was admitted to the bar, and soon after was appointed Recorder of the city of New York; but in 1775, was removed for adherence to his country against British oppression.

In 1775, he was a member from Dutchess county, of the New York Provincial Convention, which assembled at the Exchange in the city of New York, on the twentieth of April, to choose delegates to represent the New York Colony in the second Continental Congress, and was appointed one of the delegates.

In May, 1776, he attended the Congress and was one of the committee composed, beside himself, of Jefferson, Adams, Franklin and Sherman, to prepare the Declaration of Independence. He was unable, however, to sign that document as he was previously called home to his duties as a member, from Dutchess county, of

¹ Francis' Address on Robert R. Livingston, p. 24.

² Sedgwick's Life of William Livingston, p. 73.

the third New York Provincial Congress. He was also a member, from the same county, of the Convention of Representatives of the State of New York, and he was associated, on the sixteenth of July, with John Jay and others, on the secret committee to obstruct the navigation of the Hudson river, to delay the passage upward of the vessels under Lord Howe.

On the first of August he was appointed upon the committee which prepared the first Constitution of the State, and also chairman of a committee of six that reported the plan of the Council of Safety, he being included a member.¹

On the nineteenth of October, he was placed by the New York Committee of Safety, upon a committee of twelve, directed to repair to Albany to coöperate with General Schuyler on devising and executing measures to repel the invasion of Burgoyne and St. Leger, on the northern and western frontiers of New York, and also invested with power to call out the whole or any part of the militia of the counties of Tryon, Charlotte, Cumberland, Gloucester and Albany, to such places as might be thought proper.²

On the 3d of May, 1777, he was elected, by the Convention, and on the 8th appointed by it in the temporary plan of government, and commissioned October seventeenth following, by the Council of Appointment, the first Chancellor of the State of New York.

On the 13th, the New York Convention resolved their thanks to him for long and faithful services to the Colony and State of New York as a delegate in the Continental Congress.³

On the 18th of October, 1779, he was made a special delegate to Congress under the Articles of Confederation and Perpetual Union (adopted November 15th, 1777),⁴ his office to continue till the first of April following.

The New York Legislature, on the twenty-third of the same month, appointed him, as Chancellor, a member of the Council to carry on the Government in the southern district of the State, between the time the enemy should abandon or be dispossessed of it and the Legislature could convene.

¹ Journal of New York Provincial Convention, vol. 1, p. 552.

² Journal of New York Committee of Safety, vol. 1, p. 684.

³ Journal of New York Provincial Convention, vol. 1, p. 931.

⁴ Hildreth's History of the United States, vol. 3, p. 396.

On the 1st of September, 1780, he was again sent to Congress, as a special delegate, till the first of the succeeding March.

In August, 1781, he was appointed Secretary of the Department of Foreign Affairs,¹ an office created that year, the foreign business of Congress having previously been conducted by the Committee of Secret Correspondence. On the twentieth of October he entered upon his duties, and resigned in 1783.

He was reappointed, on the 22d of June, 1783, Chancellor of the State of New York, in consequence of doubts whether the Chancellorship had been vacated by his appointment of Secretary of Foreign Affairs.

On the 12th of November, 1784, the Legislature appointed him on an agency, composed of John Jay, Walter Livingston, Egbert Benson and others, relative to the disputed rights of Massachusetts and New York as to certain territory, within the (claimed) western limits of the latter.²

¹ Hildreth's History of the United States, vol. 3, p. 404.

² The great obstacle to the adoption of the Articles of Confederation was in determining whether the immense western territory should be ceded, by the States claiming it, to the Federal Government for the common benefit. The States the boundaries of which were established, and which consequently held no share in that territory, viz.: New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware and Maryland, held that as the domain was to be wrested from the British by joint force, it should enure to the benefit of all.

On the other hand, those States that claimed their respective boundaries as embracing that territory, viz., Massachusetts, Connecticut, Virginia, the Carolinas, Georgia and New York, from the anticipated increase to their power and wealth in its possession, strenuously opposed the cession.

Massachusetts, Connecticut, Virginia and the Carolinas claimed to the Pacific, or rather to the Mississippi river (which was the western boundary of Great Britain), under their charters. Georgia claimed to that river, under the Proclamation of the British Crown, October 7, 1763, annexing to her the region north of the St. Mary's and west of the Altamaha; while New York claimed by cessions of jurisdiction made by the Iroquois (whose conquests extended over the region) when she was a Colony.

After a long debate, the claimant States obtained the incorporation of a provision into the Articles of Confederation that no State should be deprived of territory for the benefit of the United States. Maryland alone, of all the non-claimant States, refused assent to the provision, declaring her disapprobation to the Confederation without an acknowledgment of the right of all to the region in dispute.

At length, New York, urged by patriotic motives, on the 19th of February, 1780, in an act "to facilitate the completion of the Articles of Confederation and

On the 2d of December, 1784, he was sent as a delegate (not special) from New York to Congress.

In 1786 (May 6th), he was appointed by the Legislature of New York one of the commissioners to represent the State at the General Convention, to take into consideration the trade and com-

perpetual union among the United States of America," vested a discretionary power in her Congressional delegates (three to be present) to cede certain of her western territory to the Federal Government. Congress, on the sixth of September succeeding, invited the other claimant States to follow the example of New York, the region ceded to be disposed of for the general good, and be admitted, when the proper time arrived, as States, on the same footing as the others, into the Union.

Accordingly, Virginia, Massachusetts, Connecticut, South Carolina, North Carolina and Georgia executed deeds of cession to the United States of their claims, at different periods and in the following manner, viz.:

On the 1st of March, 1784, Virginia ceded all her right to the territory north-westward of the Ohio. On the 19th of April, 1785, Massachusetts ceded her claim. On the 14th of September, 1786, Connecticut ceded her claim to the lands lying west of a line beginning at the completion of the 41st degree of north latitude, one hundred and twenty miles west of the western boundary line of Pennsylvania as then claimed by her, thence north to $42^{\circ} 2'$ north latitude. On the 9th of August, 1787, South Carolina ceded her claim to the territory included within the river Mississippi, and a line beginning at that part of the said river which was intersected by the southern boundary line of North Carolina, and continuing along said boundary line until it intersected the ridge of mountains which divides the eastern from the western waters; then to be continued along the top of the said ridge, until it intersected a line to be drawn due west from the head of the southern branch of Tugoloo river to the said mountains, and thence to run a due west course to the Mississippi. In 1789, North Carolina, by an act of her Legislature, ceded to the United States the territory now constituting the State of Tennessee, and in 1802 Georgia ceded to the same her claim to the territory, to the amount of one hundred thousand square miles, west of what now constitutes her western boundary.

On the 1st of March, 1781, James Duane, William Floyd and Alexander M'Dougall, the New York Delegates in Congress, ceded by deed to the United States all the claim of their State (the cession, however, subject to the ratification of the New York Legislature, unless the boundaries reserved for the future jurisdiction of the said State by the instrument of cession should be guaranteed by the United States) to the territory west of a line drawn through the most westerly bent or inclination of Lake Ontario. On the same day, the Maryland delegates signed the Articles of Confederation.

A controversy had long existed between New York and Massachusetts, relative to their respective rights and boundaries. They claimed under conflicting charters. Massachusetts claimed under the charter, granted by William and Mary in 1692, incorporating into one Province, under the name of Massachusetts Bay, the old Colony of Massachusetts Bay chartered by the Council at Ply-

merce of the United States. His associate commissioners were Alexander Hamilton, Egbert Benson, James Duane, Leonard Gansevoort and Robert C. Livingston.

mouth,* March 19, 1627; the Colony of Plymouth chartered by the same Council in 1629; the Islands of Nantucket and Martha's Vineyard, purchased from the Indians at an early day; the Province of Maine granted by Charles I to Sir Ferdinando Gorges in 1639, and the French Province of Acadie. New York claimed under the charter, granted by Charles II, in 1664, to the Duke of York, passing through and dividing into two parts, the Massachusetts charter.

Opposing grants of the territory in dispute, particularly along the eastern portion, were made by the two governments, leading to collisions attended with violence and bloodshed. So much was this the case, that in 1756, during the old French war, the regulars were interposed to quiet the strife between the belligerents. In 1773, commissioners met at Hartford, and settled the boundary line between the two parties at the east, although the line was not actually run until 1787.

It was not until 1784 that Massachusetts followed the example of New York in the cession to the Union of her western territory. In November of that year, she authorized her delegates in Congress to cede such part of her lands between the Hudson and the Mississippi, in such manner and on such conditions as they might think proper and suitable.

Accordingly, on the 19th of April, 1785, as before remarked, two of her delegates, Samuel Holten and Rufus King, executed a deed of cession to the United States, of all the territory westward of a line twenty miles west from the Niagara River down to Pennsylvania.

* After the charter of Sir Walter Raleigh was forfeited by his attainder of High Treason, James I, for the purpose of colonizing North America between the 34 and 45° N. lat., granted a charter, on the 10th April, 1606, to a London company, and one formed principally at Bristol and Plymouth. The former, whose settlement was to be known as the first Colony of Virginia, could colonize between 34 and 41° N. lat.; the latter, its settlement distinguished as the second Colony of Virginia, was to colonize between the 38 and 45° N. latitude.

On the 23d of May, 1609, the London Co. obtained a new charter, with a separate grant of territory, viz., two hundred miles north and south of Point Comfort, and west to the Pacific, with the islands within one hundred miles of the Atlantic and Pacific coasts within the above precinct. On the 3d of November, 1620, the Plymouth Co. also obtained a new charter, called the Great Patent, issued to forty noble and wealthy persons, vesting them with jurisdiction over the North American region from the 40 to 48° N. lat., excepting where "any other Christian prince or people" were in actual possession. This Co. was thereafter known as the Council for New England, it and the London Co. dividing between them the whole North American Continent under the English claim, by a line nearly accordant with the present slave and non-slave line, into the New England and Virginia Provinces.

In 1635, the Council for New England surrendered their charter after dividing their territory into twelve Provinces, to eight of their number (among them the Marquis of Hamilton, the Earl of Sterling and Ferdinando Gorges) requesting the King to issue charters to them, which was accordingly done.

The Convention (at which Messrs. Hamilton and Benson only attended) was held at Annapolis, September eleventh to fourteenth, in the above year and recommended the Philadelphia Con-

The only controversy between the two States, after their respective cessions, related to the Indian lands west of the Delaware river. Massachusetts claimed under her charter; New York under treaties with the Iroquois, the former possessors of the soil.

The ninth article of the Confederation prescribed the erection of a tribunal for the adjudication of territorial claims between the several States, and Massachusetts (May 27th, 1784) petitioned Congress for the appointment of a Federal Court, thus provided for, to decide between her and New York.

On the 11th of November, 1784, the Legislature of Massachusetts appointed John Lowell and James Sullivan, with their then delegates in Congress, viz., E. Gerry, S. Holten, Geo. Patridge and Rufus King, her agents, and on the next day, New York appointed as agents on her part, John Jay, James Duane, Robert R. Livingston, Egbert Benson and Walter Livingston.

On the twenty-fourth of December following, the respective agents assembled at Trenton, where Congress was sitting, and agreed upon commissioners to form a court for the trial of the controversy; and Congress adjourned to meet at New York on the eleventh of the succeeding January. Delays, however, occurred as to the trial of the matter, and the conferences were extended far into the year 1785. The agents of both States then, supposing they could settle the matter better among themselves than by a Federal Court, requested their respective Legislatures to authorize them so to do. Consequently, on the 28th of April, 1786, the Legislature of New York appointed John Haring, Melancthon Smith, Robert Yates and John Lansing, Jr., associate agents with Messrs. Duane, Benson and Robert R. Livingston, in place of John Jay and Walter Livingston, who, by reason of their offices under the United States, had resigned. The agents were authorized to settle the controversy otherwise than by the Federal Court, and in such manner as they should judge most conducive to the interest of the State.

On the fifth of July in the above year, the Legislature of Massachusetts empowered by act her agents, appointed relative to the controversy (viz., John Lowell, James Sullivan, Theophilus Parsons and Rufus King, appointed 26th April, 1784), also to settle the dispute otherwise than by a Federal Court, if they should judge it expedient.

The agents of the respective States assembled at Hartford, Connecticut, on the 30th of November, 1786, and on the sixteenth of December following, signed their article of agreement in settlement of the controversy.

Massachusetts ceded to New York all claim to jurisdiction west of the present east line of the latter, and received from New York the pre-emption right of sale from the Indians, and all her other right and title (she, however, retaining the jurisdiction) to 230,400 acres between the Oswego and Chenango rivers, and to a tract west of a line commencing eighty-two miles west of the northeast corner of Pennsylvania, and running thence due north through Seneca lake to Lake Ontario, amounting to about five millions of acres. One mile in depth along the east shore of the Niagara river, and extending its whole length was, however, reserved to New York.

vention of 1787, which framed the Constitution of the United States.

On the 30th of November, 1786, Mr. Livingston, with the other

These lands to Massachusetts, were to be exempt from all taxes whatsoever, so long as she retained them, as well as from rents and services in any grant made by her. It was agreed that New York should not cede the jurisdiction without the consent of Massachusetts, while the latter remained the owner; that Massachusetts might hold treaties with the Indians relative to the right of soil, with armed force if necessary; that she might sell her preëmption right, and the grantees be authorized to extinguish the Indian claim; that no purchase from the Indians of such grantee, however, should be valid unless in the presence and by the approval of a superintendent, appointed by Massachusetts, and be furthermore confirmed by that State; and that for fifteen years after such confirmation the said lands should be exempt from all general and State taxes, but not from duties or imposts, or town and county taxes.

On the 1st of April, 1788, Massachusetts contracted to Oliver Phelps and Nathaniel Gorham, of that State, and representing a company formed of themselves and others, associated for the purchase of the lands, the preëmption right to the whole of the ceded six millions, the sum to be paid being \$1,000,000, payable in three annual installments, in certificates of "Massachusetts consolidated stock."

Phelps, on the 8th of July, 1788, held a treaty at Buffalo with the Seneca Indians, and obtained their title to about two million, six hundred thousand acres, lying in the eastern part of the purchase from Massachusetts, the Indians refusing to convey west of the Genesee river (the boundary, as they alleged, between the white and red man), except about two hundred thousand acres, called the Mill Seat Tract, and now comprising the city of Rochester, which, on Phelps expressing a desire for a mill-seat, they conveyed to him.

On the following twenty-first of November, Massachusetts conveyed to Phelps and Gorham all her right and title to the above two million, six hundred thousand acres.

This tract was divided by the grantees into townships, six miles square, which were subdivided into lots of various sizes. Up to November, 1790, they had sold in it about fifty townships. On the eighteenth of that month they sold to Robert Morris, of Philadelphia (the celebrated financier of the Revolution), the residue of the tract (except two townships), amounting to upwards of a million and a quarter acres, mostly in the north and south parts of the tract. Morris soon after sold the same to Sir William Pultney, which, with other lands, added by the latter, became known as the "Pultney Estate."

Phelps and Gorham having paid about one-third of the purchase money of the whole region purchased from Massachusetts, failed to meet the installment due 1789--90. The State thereupon prosecuted their bonds, and after a protracted negotiation, they, on the 10th of March, 1791, reconveyed to the State the whole of the lands, the Indian title to which they had not extinguished, viz., the region west of the Genesee river, excepting, however, the Mill Seat Tract.

Two days after, Massachusetts contracted to Samuel Ogden, acting for Robert

New York commissioners on the Massachusetts controversy, met the commissioners of the latter State at Hartford, Connecticut, where the controversy was definitively settled.

Morris, all the lands thus reconveyed to her by Phelps and Gorham, amounting to about three millions, two hundred thousand acres, reserving, however, one-sixteenth part, which John Butler had contracted for with Phelps and Gorham, prior to their reconveyance.

On the eleventh of May ensuing, the said State conveyed to Morris the above lands, including the reserved sixteenth part, Butler having assigned his right to Morris.

In December, 1792, and in February and July, 1793, Morris sold to Herman Leroy, John Linklaen, Gerrit Boon, William Bayard and Matthew Clarkson, in four separate deeds, the whole of these lands, except one tract of five hundred thousand acres, called afterward the Morris Reserve. He agreed, furthermore, to extinguish the Indian title to the lands which he subsequently did, viz., in September, 1797, with the exception of certain Indian reservations, among them those of the Allegany, Cattaraugus, Buffalo, Tonawanda and Tuscarora.

The above mentioned grantees of Morris had purchased the lands with the funds of, and held them in trust for certain Holland capitalists, the latter being unable, as aliens, by the then laws of New York, to hold real estate.

Acts were, however, subsequently passed to meet the difficulty, and the whole land was conveyed by the then trustees (changes having been made among them), in three deeds, to certain individuals, composing three separate branches of the Holland Land Company.

After the Hartford settlement, New York found herself in the possession of about seven million of acres of public lands. On the 22d of March, 1791, the Legislature authorized the Commissioners of the Land Office to sell these lands, except those in the southern district, those reserved by law to the use of the State, lands in Canaan, Columbia county, and those set apart for the use of the army in Herkimer county.

Pursuant to this authority, the commissioners sold upwards of five millions and a half acres to various individuals, Alexander McComb purchasing over two and a half millions.

There remained to New York a million and a half acres. Of these, five hundred thousand were, pursuant to a recommendation of Governor Lewis, made on the 5th February, 1805, set apart by the Legislature on the second of the succeeding April, for the use of common schools, and became the basis of the present Common School Fund of the State.

Sixteen years later, the Constitution of 1821 ordained that the proceeds of the public lands, not reserved or appropriated to the public use, or ceded to the United States, thereafter to be sold, should, with the existing School Fund, become a perpetual fund, the interest to be applied to the common schools of the State.

In accordance with this provision, the lands, amounting to nine hundred and ninety-one thousand six hundred and fifty-nine acres, were transferred to the School Fund, three-quarters of which fund, before and since 1821, have been derived from these lands.

In 1788 Chancellor Livingston was a member, from the city of New York, of the New York State Convention, which ratified the United States Constitution, he voting for the ratification.

In April, 1789, he, as Chancellor, administered the oath of office to Washington, in the city of New York, on his first inauguration to the Presidency.

In 1790 the Chancellor was appointed, by an act of the Legislature, March sixth, one of the commissioners on the subject of the controversy between the State of New York and Vermont.¹ The New York commissioners met commissioners appointed by Vermont, and by declaring the consent of New York that the State of Vermont should be admitted into the Union, and relinquishing on that event all jurisdiction over, and ceding certain lands to her, terminated in a friendly manner the dispute.

In 1794 the post of Minister to France was tendered to Chancellor Livingston by Washington, which he, however, declined.

On the 27th of March, 1798, an act repealing "An act for granting to John Fitch the sole right and advantage of making and employing the steamboat by him lately invented," (passed March 19, 1787) and vesting in Robert R. Livingston privileges similar to those granted to Fitch, for the term of twenty years from the passage of the act, passed the New York Legislature. The bill was introduced by Dr. Samuel L. Mitchell, then a member of the Assembly, on the ground that Mr. Livingston was represented as possessed of a mode of applying the steam engine to propel a boat on new and advantageous principles, but deterred from carrying the same into effect by the existence of the above law concerning Fitch, who, it was further suggested, was either dead or had withdrawn himself from the State, without an attempt for more than ten years at carrying the law into effect.

The act relative to Mr. Livingston was granted under the proviso, that he should, within twelve months from the passage of the act, prove to the Governor, Lieutenant-Governor and Surveyor-General, or a majority of them, his having built a boat of at least twenty tons capacity, propelled by steam, whose speed on the Hudson river was not less than four miles an hour, and that

¹ Laws of New York, 1789-96, p. 13.

he should at no time omit for one year to have such a boat plying between New York and Albany.¹

In 1801 Mr. Livingston (relinquishing his Chancellorship) accepted the post of Minister to France, conferred on him by Jefferson among the first acts of the latter's administration.

Napoleon was at that time first Consul. Mr. Livingston was the efficient and prominent agent, while at his court, in the purchase of Louisiana, addressing a memoir on that subject to the French Government.

Seven days before the arrival of Mr. Monroe, as special minister for the furtherance of the object, Napoleon announced to the Bureau of State his determination to sell whatever American territory he had obtained from Spain. The Louisiana purchase was effected for \$15,000,000.

While in Paris, Mr. Livingston formed an intimacy with Robert Fulton, and by his counsels and money assisted the latter very materially in the introduction of steam navigation.

After his resignation as minister, he returned to America in June, 1805, and on the 26th of February, 1813, he died at Clermont, Columbia county, New York, in the sixty-sixth year of his age.

Mr. Livingston was tall and well proportioned; of imposing presence, easy and pleasant in discourse and in manner graceful and courteous. His private life was imbued with pure morals and true piety, as his public had been with integrity and patriotism. He was generous to the poor, disinterested in his friendship and honorable in his intercourse with his fellow-men.²

Mr. Livingston was married to Mary Stevens, daughter of John Stevens, of New Jersey, by whom he had two daughters.

Dr. Mitchell wrote thus to a friend: "Upon this occasion the wags and the lawyers in the house were generally opposed to my bill. I had to encounter all their jokes and the whole of their logic. One main ground of their objection was, that it was an idle and whimsical project, unworthy of legislative attention."

Ezra L'Homedieu, then a Senator, also states, that the application of Mr. Livingston was a standing subject of ridicule throughout the session, and that the younger members would, sometimes, when in the mood, call up "the steam-boat bill" for diversion, at the expense of the project and its supporters.

² Life of Chancellor Livingston by Dr. Francis; Herring's Portrait Gallery, vol. 4.

He was for many years President of the Academy of Fine Arts, established in New York in 1801, adding to it a collection of busts and statues, and was instrumental in obtaining for it, through Napoleon, a number of rich prints and paintings. He was also president of an agricultural society, and much devoted to the improvement of agriculture. He introduced the merino sheep into the State of New York, as well as clover, a better breed of domestic cattle, and the use of gypsum or plaster of Paris upon land.

Mr. Livingston was also a vigorous writer. In 1787 he published an oration delivered before the Society of the Cincinnati; and in 1808 an Address to the Society for the Promotion of Useful Arts, established in 1793, mainly through his exertions. He also contributed many papers to the transactions of this society; published a work on the merino sheep and essays on agriculture. His latest production was a paper on agriculture, written only a few days before his last illness. In it he shows the capabilities as to soil, climate, fertility, resources, &c., of this country, the value of horticultural labor, and the reciprocity between agriculture and manufactures.

Mr. Livingston was likewise an orator, and a profound classical and historical scholar.

JOHN LANSING,

SON OF GERRIT LANSING,

Was born in the city of Albany on the 30th of January, 1754.

He studied law with Robert Yates (Chief Justice) in Albany, and with Mr. Duane in the city of New York.

In 1776 and 1777, he was the military secretary of Major-General Schuyler, commander of the northern department, and who was engaged in the summer of the latter year in active operations to resist the advance of Burgoyne. In a letter¹ to James Duane, dated at Saratoga (now Schuylerville) on the 30th of November, 1776, Mr. Lansing declined accepting, by reason of his

¹ Journal of New York Provincial Congress, vol. 2, 248.

holding the above post under General Schuyler, a commission of lieutenant in the new levies of troops, to which he had been appointed.

After being admitted to the bar, Mr. Lansing pursued his profession in the city of Albany.

From 1780-1 to 1784, he was a member of Assembly (4th, 5th, 6th and 7th sessions, the latter commencing January 21st and ending May 12th) from the city and county of Albany.

On the 3d of February, 1784, he was appointed a member of Congress, under the Articles of Confederation, and on the twenty-sixth of October following, was reappointed.

On the 18th of January, 1786, he was elected Speaker of the New York Assembly. On the twenty-eighth of April following, he, together with John Haring, Melancthon Smith and Robert Yates, was appointed (in place of John Jay and Walter Livingston, resigned) on the commission that met at Hartford, in that year, and made final decision of the territorial claims of New York and Massachusetts.

On the twenty-ninth of September, in the same year, he was appointed, by the Council of Appointment, Mayor of Albany.

In 1786 he was again elected a member of Assembly (10th session; commencing January 12th and ending April 21st) from the city and county of Albany.

On the 26th of January, 1787, he was once more delegated a member of Congress under the Confederation.

On the sixth of March, in the same year, the New York Legislature appointed him one of the three delegates (Alexander Hamilton and Robert Yates being the other two) to the Philadelphia Convention, which assembled on the twenty-fifth of May, and framed the Constitution of the United States. Mr. Lansing, together with Mr. Yates, was opposed to the principles of the Constitution, as presenting a system of consolidated government at variance with the rights of the States; retired from the Convention, with Mr. Yates, on the fifth of July,¹ before the Constitution had been definitely settled upon by that body, but not until it was seen how it was to be established, and published his reasons for so doing, in a letter, jointly with Mr. Yates to Governor George Clinton.¹

¹ Secret Proceedings and Debates of the Convention, 1787, pp. 225, 303.

In 1788 Mr. Lansing was a member, from Albany city and county, of the New York State Convention, which ratified the Federal Constitution, he voting against the ratification.

On the 12th of December, 1788, the Assembly of New York (12th session) reelected him speaker.

By the act of March 6th, 1790, he was appointed by the Legislature one of the commissioners on the part of the State of New York, to settle the controversy of that State with Vermont; and on the twenty-eighth of September following, he was appointed one of the justices of the Supreme Court of the said State.

In the succeeding year, by an act of the Legislature, passed on the sixth of July, he was appointed one of three commissioners (Robert Yates and Abraham Van Vechten, the other two) to determine the claims of citizens of the State of New York to lands situated in Vermont, ceded by New York at the settlement of the controversy, and what portion of certain moneys (\$30,000) each claimant should receive.

On the 15th of February, 1798, Judge Lansing received the appointment of Chief Justice of the New York Supreme Court, in place of Chief Justice Robert Yates, who had resigned under the Constitutional limit of sixty years.

On the 21st of October, 1801, Chief Justice Lansing was appointed Chancellor of the State of New York, in place of Chancellor Robert R. Livingston, who had also resigned under the above limit.

In February 1804, Chancellor Lansing was nominated, by a legislative republican caucus, to the office of Governor of the State of New York, but in a letter on the eighteenth of that month, declined the nomination.

On the 28th of January, 1817, he was appointed a Regent of the University.

In 1824, he was chosen a Presidential Elector from the city and county of Albany, and was appointed Secretary of the Electoral Board.

He died on the 12th of December, 1829, in the seventy-sixth year of his age.

Mr. Lansing possessed a large handsome person, with remarkably fine regular features; eyes and complexion light. He had

good powers of conversation; was dignified and kind in manner, and of varied information.

He was married in 1781 to Miss Ray, daughter of Robert Ray of New York, by whom he had four children, all daughters.

He is the author of a small volume entitled "Reports of Select Cases in Chancery, and the Supreme Court of the State of New York, in 1824 and 1826," viz.: In Chancery, *Lansing v. The Albany Insurance Company*, March 24, 1824; *Egberts v. Lansing*, September 7, 1824; *Lansing v. Goelet*. Supreme Court, *Globe Insurance Company v. Lansing*, February Term, 1826. Published at Albany, 1826.

JAMES KENT,

SON OF MOSS KENT,

Was born July 31st, 1763, in the town of Fredericks, then in Dutchess, now in Putnam county, New York.

He entered Yale College in September 1777, and graduated thence in September, 1781, the college in the interim having been temporarily broken up by the British troops.

In the last mentioned year he entered as a student at law in the office of Egbert Benson, then Attorney-General of the State.

He was admitted to the bar in January, 1785, and removed to Poughkeepsie, where he engaged in the practice of his profession.

In 1791, and in 1792-3, he was a member of Assembly from Dutchess county.

He was nominated, in April, 1793, to Congress as a Representative of Dutchess county, but was defeated in the election. He then removed to the city of New York.

In December, 1793, he was chosen Professor of Law in Columbia College, and in November, 1794, entered upon his duties.

In February, 1796, he was appointed by Governor Jay a Master in Chancery (there being, at that time, but two Masters in the State), and in 1796-7, was a Member of Assembly from the city of New York.

By an act passed the 24th of March, 1797, he was appointed a Commissioner, with Robert Yates and Vincent Matthews, to settle the title to disputed lands in the county of Onondaga.¹

On the twenty-eighth of the same month, he was made Recorder of the city of New York, holding the office in conjunction with that of Master in Chancery.

In 1798, he resigned his Professorship in Columbia College.

On the 6th of February, 1798, he was appointed a Justice of the Supreme Court of the State of New York, and originated the practice, followed to the present day, of delivering a written, argumentative opinion in every case of sufficient importance to become a precedent.

He was chosen, on the 3d of February, 1800, a Regent of the University.

In 1801 (act of April 8th) he and Jacob Radcliff were appointed to revise the laws of the State.² The revision, in two volumes, was published in January and April, 1802.

On the 2d of July, 1804, he was appointed Chief Justice of the New York Supreme Court, and so continued until the 25th of February, 1814, when he was appointed Chancellor of the State. His decisions, as the latter, are embodied in seven volumes of reports, William Johnson, Reporter.

He was a member, in 1821, from the city and county of Albany, of the convention (convening at Albany, August 28th, and adjourning November 10th) by which the second constitution of the State was formed.

In 1823 (July 31st) he resigned the office of Chancellor, under the constitutional limit, having attained the age of sixty, and in the autumn he again fixed his residence at the city of New York, having previously resided in the city of Albany.

In the succeeding year he was once more chosen a Professor of Law in Columbia College, and in that year delivered a course of law lectures, comprising nearly all the subjects that are embraced in his Commentaries and including some, such as the rules of procedure and pleading in civil actions and the law of crimes and punishments, that are there omitted.

¹ Laws of New York, vol. 3 (Greenleaf's ed.), p. 425.

² Laws of New York, 1801, p. 215.

He repeated this course of lectures in 1825, but after that year, although he still retained the office and title of professor, his labors as such were discontinued.

In the following year he published the first volume of his *Commentaries on American Law*, embracing that portion of his lectures which he had then revised and enlarged.

In 1828, he was chosen President of the New York Historical Society.

In 1830, his *Commentaries*, in four volumes, complete, were published.

On the 12th of December, 1847, he died, at the city of New York, aged eighty-four years.

Judge Kent was small in person, vivacious in speech and manner, quick and energetic in action, with strong features, dark eyes and complexion. Both in his public and private life he was unimpeachable in his integrity. His industry was remarkable, his demeanor courteous, and he was kind and accessible in his intercourse with the world.

In 1785, he married Miss Bailey. He had three children, a son and two daughters.

WORKS AND ADDRESSES OF JAMES KENT.

Dissertations, being the preliminary part of a course of Law Lectures, 1795.

Revision of the Laws of New York (with Judge Radcliff), 1802.

Lecture, introductory to a course of Law Lectures in Columbia College, February 2, 1824.

Commentaries on American Law (vol. 1, published in 1826; vol. 2, 1827; vol. 3, 1828; vol. 4, 1830). The work has passed through nine editions.

Discourse, as President, before the New York Historical Society, December 6, 1828.

Notes to the Charter of the City of New York, with a Treatise on the powers and duties of the Mayor, Aldermen and Assistant-Aldermen, and a Journal of the New York City Convention for revising and amending the City Charter, beginning June 23d and ending September 28, 1829.

Address before the Phi Beta Kappa Society of Yale College, September 13, 1831.

CHIEF JUSTICES.

JOHN JAY,

Appointed by the Convention of Representatives of the State of New York, on the 8th of May, 1777; commissioned by the Council of Appointment, under the Constitution of 1777, on the seventeenth of October of that year. Resigned September, 1779. (See Biography.)

RICHARD MORRIS,

[NEW YORK COLONIAL JUDGE OF VICE-ADMIRALTY.]

SON OF LEWIS MORRIS,

Was born at Morrisania, Westchester county, New York, on the 15th of August, 1730.

He graduated at Yale College in 1748, and commenced the study of the law.

In 1750, he was appointed Clerk of the Courts of Oyer and Terminer and General Gaol Delivery for the Colony of New York.¹

On the 29th of April, 1752, he was commissioned, under the hand and seal at arms of Governor George Clinton, at Fort George,

¹ Journal General Assembly, 2, 788.

city of New York, attorney at law, authorized to appear in all his Majesty's Courts of Record in the Province of New York.¹

He commenced the practice of his profession in the above city, where he acquired a large practice.

On the 11th November, 1761, he was appointed sole Clerk of the Circuits or courts for the trial of causes brought to issue in the Supreme Court for the Province of New York.

On the 2d of August, 1762, he received from Governor Monckton a commission as Judge of the Vice-Admiralty of the said Province.

He continued in the discharge of his duties without salary until and including 1774.

In 1775 he resigned his office, having embraced the cause of the Colony against the Crown.

The royal Governor, William Tryon, requested him to continue in the said office of Vice-Admiralty until more quiet and profitable times. His answer was that he would never sacrifice his principles to his interest, and that his office was at the Governor's disposal.² He then became a marked man. Special orders were issued by Governor Tryon in 1778, at first to take possession,³ and then to burn his country seat, in Westchester county, which were carried into effect and his estate devastated.

On the 31st of July, 1776, the New York Provincial Convention appointed him, by unanimous resolution, Judge of the High Court of Admiralty of the State of New York. He, however, on

¹ Record Commissions, 5, 22.

² Tryon's Report on the Province of New York, 1 Documentary History, 521.

³ Taken from private papers in the possession of his grandson Lewis G. Morris, Esq.

⁴ [Copy of order, in possession of Lewis G. Morris].

By His Excellency Major-General Trion:

Permission is granted to Lieutenant Hunt, of the corps of guides or pioneers, to take possession of the house and farm of Richard Morris, near Redoubt No. 8, for the convenience and shelter of his sister and eight children, sent down from their homes by the Rebels, provided it does not interfere with, or is not wanted for the King's service.

Given under my hand, at Mount Morris, the eighteenth day of December in the eighteenth year of His Majesty's reign.

To all whom it may concern,

WM. TRION, Governor.

the second of August following, courteously declined the office, personally assuring the Convention that he most heartily joined with his countrymen, and was ready to support them with his life and fortune; but that, from the situation of his family and property, the remainder of his life was necessary for attention to his own affairs.¹

On the 4th of March, 1778, Mr. Morris was appointed, by the Assembly of the State of New York, a Senator from the southern district,² in place of Doctor John Jones, who had been appointed among others (on account of the district being possessed by the enemy, precluding an election³), in the temporary plan of government adopted by the New York Provincial Convention, on the 8th of May, 1777, but who resigned on the 26th February, 1778, by reason of ill health and professional duties.⁴

Mr. Morris continued a Senator until October, 1779.

On the twenty-third of that month he was appointed, by the Council of Appointment, Chief Justice of the Supreme Court of the State of New York, succeeding John Jay, elevated to the Chief Justiceship of the United States.

On the same day he became, by virtue of his office, a member of the Council appointed by the Legislature to carry on the Government in the southern parts of the State, between the time the enemy should abandon or be dispossessed of the district and the Legislature could be convened.

In 1788 he was a member, from the city and county of New York, of the State Convention that ratified the Federal Constitution.

In September, 1790, he resigned his office of Chief Justice, having arrived at the constitutional age of sixty, and retired to his estate (Scarsdale) in Westchester county, taking no active part in public affairs, but a deep interest in whatever concerned the public welfare.

He died at Scarsdale, on the 11th of April, 1810, in the eightieth year of his age. His remains repose in the family vault in Trinity Church yard, New York city.

¹ Journal of New York Convention, 1, 550, 554.

² Journal of New York Assembly, 1778, 68.

³ Journal of New York Convention, 1, 918.

⁴ Journal of New York Senate, 1778, 69.

Mr. Morris married Sarah, daughter of Henry Ludlow. He had three children, two sons and a daughter.

He was commanding in appearance, bland and dignified in his manners; a gentleman of the old school, possessing literary tastes; was firm and decided in character and of inflexible integrity.

ROBERT YATES,

SON OF JOSEPH YATES,

Was born at Schenectady, on the 27th of January, 1738

In 1754 he was sent by his parents to the city of New York, where he received a classical education. He then studied law with Governor William Livingston, of New Jersey.

On the 9th of May, 1760, Mr. Yates was commissioned by Lieutenant-Governor James De Lancey, under his hand and seal at arms at Fort George, attorney at law, to practice in the Mayor's Court and Inferior Courts of Common Pleas, at the city of Albany. He then fixed his residence in that city, and being admitted a counselor in due time, soon rose to eminence as a lawyer.

From the 14th October, 1771, to the 14th October, 1775, he was a member of the Board of Aldermen from the second ward of the city.

He was also Attorney and Council of the Board.

About this period, and while a separation between this country and Great Britain was becoming highly probable, he took distinct grounds as a Whig, and wrote several essays, under the signature of "The Rough Hewer," defending the rights of America, both of which raised him in political importance, the latter gaining for him the same soubriquet as the signature he employed.

In the years 1775, 1776 and 1777, he was a member from Albany city and county, of the first, second and third New York Provincial Congress, and of the "Convention of Representatives of the State of New York."

On the 15th of March, 1776, he was appointed, by the second Provincial Congress, one of three members, for the city and county of Albany, of the Committee of Safety.¹

On the sixth of April following he was made, by the second Continental Congress, secretary to the commissioners for Indian affairs in the northern department;² and on the sixteenth of July was placed, by the New York Convention of Representatives, on the secret committee with John Jay, Robert R. Livingston and others, to interpose barriers to the passage of Lord Howe's vessels up the Hudson, by obstructing the channel of the river.

On the first of August following, he was by the same Convention made one of the committee that formed the first Constitution of the State.³

On the succeeding nineteenth of October, the New York Committee of Safety appointed him member of a committee directed to repair to Albany to coöperate with General Schuyler in measures to repel the British on the northern and western frontiers of the State, and for that purpose empowered to call out the militia of the frontier counties.⁴

On the 7th of March, 1777, he and John Sloss Hobart were appointed, by the New York Convention, commissioners in behalf of the State to meet the commissioners of certain States, on the seventeenth following, at Yorktown, Pennsylvania, pursuant to resolutions passed by the General Congress on the fifteenth of February preceding.⁵ On the eleventh, however, by reason of his absence from the Convention, Colonel Robert Van Rensselaer was substituted.

On the third of May following, Mr. Yates was elected by the New York Convention, and on the succeeding eighth appointed (in the temporary plan of Government adopted by the Convention) one of the two justices of the Supreme Court (John Sloss Hobart the other) and commissioned as such by the Council of Appointment on the seventeenth of October following.⁶

¹ Journal of the New York Provincial Congress, 1, 363.

² Journal of Continental Congress (1776), 2, 123.

³ Journal of New York Convention of Representatives, 1, 552.

⁴ Journal of New York Committee of Safety, 1, 648.

⁵ See Sketch of John Sloss Hobart.

⁶ Journal of New York Convention of Representatives, 1, 910, 917.

In 1779, on the 23d of October, he was appointed by act, as a Justice of the Supreme Court, one of a Council to carry on the government of the State in the southern portion thereof from the time the same should be abandoned by, or dispossessed of the British troops, to the convening of the Legislature.¹

On the 28th of April, 1786, he, with John Haring, Melancthon Smith and John Lansing, Jr., was placed upon the commission relative to the Massachusetts controversy, in place of John Jay and Walter Livingston, resigned.²

In the succeeding year, a legislative act of the first of March (repealing the acts 7th March, 1785, and 29th April, 1786, on the subject stated below) appointed Mr. Yates, Philip Schuyler, Gerard Banker and Simeon De Witt, with the assistance of John Ewing, David Rittenhouse and Thomas Hutchins and two other United States Commissioners, to agree with agents appointed by Massachusetts, on what principles the line of jurisdiction between that State and the State of New York should be run.

In the same year, Judge Yates was a member of the Convention that met on the twenty-fifth of May, at Philadelphia, and framed the Constitution of the United States, Alexander Hamilton and John Lansing, Jr.,³ being his associates, the three representing the State of New York.

Judge Yates, with Mr. Lansing, was opposed to the principles of the Constitution as conflicting with State sovereignty, and with the latter; on the fifth of July, withdrew from the Convention, joining in a letter to Governor Clinton, which assigned the reasons for so doing.

In 1788 he was a member, from the city and county of Albany, of the State Convention that ratified the Federal Constitution, he voting against the ratification; and in April, of the following year, was a candidate for the Governorship against George Clinton, but was defeated.

In March, 1790, the Legislature appointed him one of the commissioners on the part of the State of New York, to settle the controversy of the said State with Vermont.⁴

¹ New York Laws, 1779, 96.

² New York Laws, 1786, 95.

³ New York Laws, 1787, 89.

⁴ New York Laws, 1789-96, p. 13.

On the 28th of September, 1790, he was appointed Chief Justice of the Supreme Court of the State of New York.

In 1795 (April 6th), he was made one of the commissioners to decide the claims of citizens of New York to lands ceded by said State to Vermont, and determine what portion of the \$30,000 each of the claimants should receive.¹

At the April election, in 1795, Chief Justice Yates was once more a candidate for Governor, running against John Jay, and was again defeated.

In 1797 the Legislature appointed him, by an act of March twenty-fourth, one of three commissioners (James Kent and Vincent Matthews the other two) to settle disputes concerning the titles to lands in Onondaga county, the commission expiring on the 1st of June, 1800.

In January, 1798, he resigned his Chief Justiceship under the limit of the Constitution, having attained the age of sixty, and resumed the practice of the law.

On the 9th of September, 1801, he died at Albany, in the sixty-fourth year of his age.

In 1765 Mr. Yates was married to Jane Van Ness, of Columbia county, by whom he had four children.

He was in person above the ordinary height, with a fine countenance; was dignified in manner, engaging in conversation and possessed great historical knowledge.

He was well and extensively grounded in English law, while his integrity and fearless discharge of duty on the bench were conspicuous.²

¹ See Laws of New York, 1789-96, p. 35.

² He was particularly distinguished for his impartiality in the trial of State criminals, and was not unfrequently obliged to abate the intemperate zeal or ill-judged patriotism of the juries who were to decide upon the fate of unfortunate prisoners. On one occasion he sent a jury from the bar four times successively to reconsider a verdict of conviction which they had pronounced against the accused because they suspected he was a Tory, though without any proof that could authorize a verdict. As the accused had become very obnoxious to the great body of the Whigs, the Legislature were inflamed, and seriously contemplated calling Chief Justice Yates before them to answer for his conduct. But he was alike indifferent to censure or applause in the faithful and independent exercise of his judicial duties, and the Legislature at length prudently dropped the affair. *Life of Ch. J. Yates, appended to the Secret Proceedings and Debates of the Convention of 1787.*

Mr. Yates was the author of notes of the "Secret Proceedings and Debates of the Convention of 1787." They remained in manuscript during his life, he, although often solicited to publish them, refusing to do so, on the grounds they were not written for the public, and that he felt under honorable obligations not to allow their publication. After his death they were published by his widow.

The published notes were copied literally from the original manuscript in the handwriting of Mr. Yates, by John Lansing, Jr.

JOHN LANSING, Jr.,

Appointed on the 15th of February, 1798, in place of Robert Yates, resigned, having attained the age of sixty.

Resigned on the 21st of October, 1801, when he was appointed Chancellor. (See Biography.)

MORGAN LEWIS,

Appointed on the 28th of October, 1801, in place of John Lansing, Jr., appointed Chancellor.

Resigned, on entering upon his duties as Governor, 1st Monday of July, 1804. (See Biography.)

JAMES KENT,

Appointed on the 2d of July, 1804, in place of Morgan Lewis, elected Governor of the State.

Resigned on the 25th of February, 1814, when he was appointed Chancellor. (See Biography.)

SMITH THOMPSON,

SON OF EZRA THOMPSON,

Was born in the town of Amenia, Dutchess county, New York, in 1767. In 1788, he graduated at Nassau Hall, New Jersey, and studied law with Chancellor Kent.

On the 19th of August, 1801, he was made District Attorney for the middle district, composed of Rockland, Orange, Dutchess, Ulster and Delaware counties.¹

He was a member, from Dutchess county, of the Convention of 1801, convened in accordance with the act passed April sixth of that year.

On the 8th of January, 1802, he was appointed a Justice of the Supreme Court of the State of New York.

In 1813 (March 3d), he was made a member of the Board of Regents of the University.

In the following year, on the twenty-fifth of February, he was appointed to the Chief Justiceship of the State of New York, in place of James Kent (appointed Chancellor), and continued in that office until December, 1818, when he resigned. In this year he was appointed Secretary of the Navy, under President Monroe; and in 1823, was chosen a Justice of the Supreme Court of the United States.

In 1828, he was the candidate against Martin Van Buren for the office of Governor of New York, but was unsuccessful.

He continued in the office of Justice of the United States Supreme Court until his death.

He died on the 18th of December, 1843, at Poughkeepsie, aged seventy-six years.

Judge Thompson was twice married. His first wife was Sarah Livingston, daughter of Gilbert Livingston, of Poughkeepsie, to

¹ This district was formed the 4th of April, 1801, and had successively five district attorneys beside Mr. Kent, viz., C. E. Elmendorph, Lucas Elmendorph, Randall S. Street, Samuel Hawkins and George Bloom.

whom he was wedded in 1794. By this marriage he had two sons and two daughters.

His second wife was Eliza Livingston, daughter of Henry Livingston, brother of Gilbert, and also of Poughkeepsie. He was married to her in 1836, and had one son and two daughters, one of whom died in infancy.

Judge Thompson was of small stature, reserved in manner and speech, but kind and affable on further approach. He was possessed of high integrity, and in his private as well as public life he commanded the respect of all.

AMBROSE SPENCER,

SON OF PHILIP SPENCER,

Was born in the town of Salisbury, Connecticut, on the 13th of December, 1765. In the autumn of 1779, he entered Yale College, and in 1782, Harvard University, whence he graduated in July, 1783.

He commenced the study of the law successively in the offices of John Canfield, Sharon, Connecticut, John Bay, Claverack, and Ezekiel Bacon, Hudson, both in Columbia county, New York.

In 1786, he was appointed clerk of the city of Hudson, and in 1788, was admitted to the bar.

In 1794, he was a member of the New York Assembly (17th session) from Columbia county; a Member of the Senate from the eastern district, in 1796 (19th session); and in 1796-7 (20th session); and from the middle district in 1798 (21st session); 1798-9 (22d session); 1800 (23d session); and 1800-1 (24th session).

On the 23d of February, 1796, he was appointed Assistant Attorney-General for the third district, composed of Columbia and Rensselaer counties.¹

¹ This appointment was under the law passed February twelfth of that year, dividing the State into seven districts, and creating the office, which continued

On the 9th of January, 1797, he was chosen a member of the Council of Appointment from the middle district, and reappointed from the same district, November 7, 1800.

In 1802, he was again a member of the State Senate (25th session) from the middle district.

On the 3d of February, 1802, he was appointed Attorney-General of the State, holding the station until the 3d of February, 1804, when he was made a Justice of the New York Supreme Court. He then removed from Hudson to Albany.

In 1805, on the twenty-eighth of January, he was chosen a Regent of the University.

In 1808 he was a Presidential elector (heading the electoral list) at the time James Madison was elected.

The following year, Judge Spencer, and Peter J. Monroe, as commissioners on the Chancery system of the State (having been thus appointed by Governor Tompkins, pursuant to a resolution of the Legislature on that subject), made a report, manifestly prepared by the former, "proposing some important reforms and alterations in" that system.

The report recommended there should be three Chancellors, with an Equity District to each, and a Court of Review formed of the whole number.

On the 9th of February, 1819, he was appointed Chief Justice of the New York Supreme Court, succeeding Smith Thompson.

In 1821 he was a member, from the city and county of Albany, of the Convention of that year that formed the second Constitution of the State.

On the 31st December, 1822, his commission as Chief Justice expired, by reason of the Constitution of 1821 taking effect from that day; but on account of a provision of that Constitution, contained in the last clause of article ninth, that persons commissioned

until the 4th of April, 1801, when the office of district attorney was instituted, the same number of districts being retained. Subsequently, however, viz., in 1808, 1809, 1813, 1815 and 1817, six new districts were added. On the 21st of April, 1818, each county was made a separate district, with a district attorney for each.

¹ Discourse on Ambrose Spencer, by Daniel D. Barnard, January 5, 1849, p. 90.

in civil offices should continue to hold said offices until new appointments or elections should take place, Mr. Spencer did not cease to be Chief Justice until the 29th of January, 1823, when his successor (Hon. John Savage) was appointed.

On leaving the bench, he resumed the practice of his profession, but after a few years wholly abandoned it.¹

On the 8th of March, 1824, he was appointed, by the Common Council of the city of Albany, to the mayoralty of the city, for the then present constitutional year.

On the 1st of January, 1825, he was reappointed by the same, for the succeeding year, but on the twenty-sixth of the following December he declined being a candidate for another appointment.

In 1829-31, he was a Representative in the twenty-first Congress, from the tenth district.

In 1839 he removed from Albany to the village of Lyons, Wayne county, New York, where he resided until his death.

In 1844 he presided at the Whig National Convention, at Baltimore, which nominated Henry Clay for President, and Theodore Frelinghuysen for Vice-President of the United States.

He died on the 13th of March, 1848, in the eighty-third year of his age.

He was thrice married. His first wife was Laura Canfield, daughter of his first legal preceptor. He was married to her on the 18th of February, 1784. His second wife was Mary Norton, widow of Burrage Norton, of England, and his third was Catherine Norton, widow of Samuel Norton, also of England. Both were sisters of De Witt Clinton.

He had six sons (the first and fifth of whom died in infancy) and two daughters; all by his first wife.

Mr. Spencer was of large, stately presence, over six feet in height, with dark eyes and complexion. He was vehement in speech and energetic in manner, but kind and approachable to all. His conversation was fluent, replete with information and indicative of the comprehensive grasp of his intellect.

¹ Barnard's Discourse, p. 30.

JUSTICES OF THE SUPREME COURT.

ROBERT YATES,

Appointed by the Convention of Representatives of the State of New York, on the 8th of May, 1777; commissioned by the Council of Appointment, under the Constitution of 1777, on the seventeenth of October of that year. Appointed Chief Justice on the 28th of September, 1780. (See Biography.)

JOHN SLOSS HOBART,

SON OF THE REV. NOAH HOBART,

Was born at Fairfield, Connecticut, in February, 1738. In 1757 he graduated at Yale College.

In November, 1765, he became a member of the association in the city of New York called "The Sons of Liberty,"¹ organized to oppose and obstruct the execution of the Stamp Act, on tidings being received of the act's passage in Parliament.

¹ So called from a passage in the speech of Col. Barre, on the 7th February, 1765, in opposition to the Stamp Act, introduced in the House of Commons on that day; in which passage he says: "Men (alluding to the rulers sent by the Crown to its subjects in America) whose behavior on many occasions has caused the blood of those Sons of Liberty to recoil within them." *Lossing's Pictorial Field Book of the Revolution*, 1, 463.

In 1775, he was chosen from Suffolk county to the Provincial Convention, held in the city of New York, April twentieth, for the appointment of delegates to represent the State in the second Continental Congress. He was a deputy from Suffolk to the first, second and third New York Provincial Congress, in 1775 and 1776, and a deputy to the Convention of Representatives of the State of New York, in 1777, which formed the first Constitution of the State. Mr. Hobart was upon the convention committee that reported the resolutions approving the Declaration of Independence; upon the one that formed the Constitution;¹ upon the one that organized the Council of Safety (of which the Convention appointed him a member), and likewise upon the committee of three (John Jay and Mr. Morris his associates) that devised the first great seal of the State.¹

On the 7th of March, 1777, he and Robert Yates were appointed, by the said Convention of Representatives, commissioners on behalf of the State of New York, to meet the commissioners of New Jersey, Pennsylvania, Delaware, Maryland and Virginia, on the seventeenth following, at Yorktown, in Pennsylvania, pursuant to certain resolutions of the General Congress of the fifteenth of the preceding February.²

¹ Journal of New York Provincial Convention, 1, 518, 552.

² The following is a copy of the resolutions:

Resolved, That considering the situation of the New England States, Congress approve of the measures adopted and recommended by the committees from the four New England States, for the defense of the State of Rhode Island; and also of the measures to be taken for preventing the depreciation of their currency, except that part which recommends the striking bills, bearing interest; which, being a measure tending to depreciate the Continental and other currencies, ought not to be adopted, and it is so recommended by Congress to the said New England States.

That the plan for regulating the price of labor, of manufactures and internal produce within those States, and of goods imported from foreign parts, except military stores, be referred to the consideration of the other United States; and that it be recommended to them to adopt such measures as they shall think most expedient to remedy the evils occasioned by the present fluctuating and exorbitant prices of the articles aforesaid.

That for this purpose, it be recommended to the Legislatures, or in their recess to the executive powers of the States of New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia to appoint commissioners, to meet at Yorktown, in Pennsylvania, on the third Monday in March next, to consider of and

On the eleventh, Col. Robert Van Rensselaer was substituted for Mr. Yates, who was absent from the Convention, and on the twelfth, Mr. Hobart, accompanied by the former, repaired to Yorktown, where they met the commissioners of the above named States. On the fourteenth of April succeeding, Mr. Hobart laid before the Convention a copy of the proceedings of the said commissioners.

On the 3d of May, 1777, he was elected, and on the 8th appointed (although not belonging to the legal profession), in the temporary plan of Government adopted by the Convention, one of the two puisne judges of the Supreme Court of the State of New York, and commissioned as such by the Council of Appointment, under the Constitution of the State, October 17th, 1777.

In 1779 (October 23d), he was placed by the Legislature, as Judge of the Supreme Court, upon the Council to carry on the Government of the State in the southern portion thereof, during the interval between the enemy's abandonment or dispossession of the district and the meeting of the Legislature.

In 1788, he was a member, from the city and county of New York, of the State Convention that ratified the Constitution of the United States, and voted for the ratification.

On the 11th of January, 1798, he was appointed, by the Legislature of New York, a United States Senator, to succeed General Schuyler; and in the following February, he resigned his office of

form a system of regulation, adapted to those States, to be laid before the respective Legislatures of each State for their approbation.

That for the like purpose, it be recommended to the Legislatures, or executive powers in the recess of the Legislatures of the States of North Carolina, South Carolina and Georgia, to appoint commissioners to meet at Charleston, in South Carolina, on the first Monday in May next.

That it be recommended to the Legislatures of the several States, to take the most effectual measures for manning the Continental frigates fitted for the sea in their respective States.

That it be earnestly recommended to the United States, to avoid, as far as possible, further emissions of paper money, and to take the most effectual measures for speedily drawing in and sinking their paper currency already emitted.

That such parts of the proceedings of the committees from the four New England States, as relate to the price of labor and other things, be published and transmitted to the other States, together with these resolutions. *Journal of Congress, February, 1777, pp. 64, 65.*

Supreme Court Justice under the constitutional limit, having attained the age of sixty.

In the spring or summer of the above year, he also resigned his Senatorship, on being appointed Judge of the United States District Court for New York, which station he held till his death.

He lived during the Revolution at Eaton Manor, by Long Island Sound, but subsequently removed to the city of New York, where on the 4th of February, 1805, he died, aged sixty-seven years.

Mr. Hobart was tall and thin in person, and of dark complexion; was taciturn in speech, grave and reserved in manner. He was apt in the discharge of his duties upon the bench, and his patriotism was displayed in many instances. Behind his gravity of manner he possessed considerable playfulness, illustrated in his letter of 18th November, 1795, to Governor Jay, on the occasion of the latter's proclamation for a Thanksgiving.¹

JOHN LANSING, Jr.,

Appointed on the 28th of September, 1790, in place of Robert Yates, Chief Justice. On the 15th of February, 1798, appointed Chief Justice. (See Biography.)

MORGAN LEWIS,

Appointed Fourth Justice on the 24th of December, 1792. On the 28th of October, 1801, appointed Chief Justice. (See Biography.)

¹ Life of Jay, by Wm. Jay, 1, 386.

EGBERT BENSON,

THIRD SON OF ROBERT BENSON,

Was born in the city of New York, on the 22d of June, 1746.

In May, 1768, he graduated at King's College, in the said city; studied law in the office of John Morin Scott; was admitted to the bar in 1772; and, removing from the above city to Red Hook, Dutchess county, New York, commenced there the practice of his profession.

In 1775, he was a member, from Dutchess, of the Provincial Convention which assembled in the city of New York, on the twentieth of April, for choosing delegates to the second Continental Congress.

On the 11th of February, 1777, he was appointed, by the "Convention of Representatives of the State of New York," one of the commissioners for detecting and defeating conspiracies in the above named State,¹ having previously been chairman of the Committee of Safety in and for Dutchess county.² Mr. Benson, as such commissioner, sent, in July of the following year, William Smith, the historian of the Colony, and an adherent to the Crown, into the British lines.³

¹ Robert Benson married Catherine Van Borssom, and had four sons, viz.:

Robert, Secretary of the First Committee of Safety of the State, and of the First Senate; and Aid-de-Camp to George Clinton, during the Revolutionary War;

Henry, commander of an armed vessel of this State on the Hudson during the Revolution;

Egbert, as above, and

Anthony, who was captured at sea, and died on board a prison ship in the harbor of New York.

² Dunlap's New York, 2, Appendix, p. cxvii.

³ Journal of the Committee of Safety; Journal New York Provincial Congress, 1, 803.

⁴ Journal of the Committee of Safety; Journal New York Provincial Congress, 1, 138.

⁵ Thompson's History, Long Island; Memoir of Benson, by Kent, 408.

On the third of May in that year he was elected, and on the eighth appointed by the above Convention, the first Attorney-General of the State of New York (being included in the temporary plan of government adopted upon that day), and commissioned as such by the Council of Appointment, on the 15th of January, 1778.¹

In the same year, on the seventh of October (the day the Legislature was dispersed by the approach of the enemy), Mr. Benson was chosen by the said Legislature a member of a new Council of Safety, vested, in the recess of the House, with the like powers of the Council of Safety organized by the Convention of Representatives, on the eighth of May preceding, to carry on the temporary government, and dissolved on the tenth of the ensuing September upon the meeting of the above Legislature at Kingston. This new Council consisted of thirteen; the members of the Legislature and State Delegates to Congress being entitled from time to time to sit and vote in the body.² It commenced its meetings, October 8th, 1777, and continued till January 7th, 1778.³

From 1777 to 1780-1, he was a member of the Assembly (1st, 2d, 3d and 4th sessions) from Dutchess county, the fourth session ending July first in the last mentioned year.

On the 21st of October, 1779, he, together with James Duane and John Morin Scott, was by an act of the Legislature of New York, appointed a commissioner to collect and procure evidence, vouchers and materials for manifesting and maintaining the boundaries and jurisdiction of the State of New York, and the rights of the grantees under the same, with reference to the controversy of the said State with parts of the counties of Cumberland, Gloucester, Charlotte and Albany, which in June, 1777, had declared themselves free of New York, under the name of the State of Vermont. The commission to procure evidence related to the proceedings of a Federal Court, prescribed by the Articles of Confederation, as to the settling disputes between the States.⁴

¹ Journal of Province, 1, 917.

² Journal New York Convention of Senate and Assembly, in Journal New York Provincial Congress, 1, 1062.

³ Journal Council of Safety; New York Provincial Congress, 1063, 1109.

⁴ Laws of New York (Holt's ed.), 1777-83, 91. See also the Vermont Controversy, in the preceding Biography of George Clinton.

On the twenty-third following, he was, as Attorney-General, made member of a Council, appointed by the Legislature, to carry on the government in the southern district of New York, between the time of the abandonment or dispossession of the enemy of said district and the meeting of the Legislature.

On the 26th of October, 1781, he was appointed from the State of New York a member of Congress under the Confederation, and reappointed on the 3d of February, 1784.

By the act of May first in the last mentioned year, he became, by virtue of his office as Attorney-General, a member of the first Board of Regents of the University, and on the twenty-sixth of the following October was again appointed a member of Congress under the Confederation.

In June, 1783, he was chosen by the United States one of three commissioners to coöperate with other commissioners, to be appointed by Sir Guy Carleton, to superintend the embarkation of the Tories for Nova Scotia. His brother commissioners were William Smith and Daniel Parker.

On the 12th of November, 1784, the Legislature of the State of New York appointed him one of the agents of said State, relative to its controversy with Massachusetts, respecting the western boundaries of the two States.

Two years after, the Legislature, on the sixth of May, appointed him, also, one of the six commissioners, on the part of the State, to the General Convention, held at Annapolis from the eleventh to the fourteenth of September in that year. Mr. Benson and Alexander Hamilton (another of the commissioners) alone attended. This convention recommended the General Convention which was held at Philadelphia, on the 25th of May, 1787, and formed the present Constitution of the United States.¹

¹ What the agency of Mr. Benson was, in the origin of this Constitution, may be seen from the following manuscript note, in his own handwriting, and written in his usual quaint style, appended to his memoir, entitled "Names," delivered before the New York Historical Society, December 31, 1816.

"The Legislature of Virginia, Feb'y 2, 1786, proposed to the States, a Convention of Commissioners, to meet at Annapolis, in Maryland, in Sept'r, 'to consider how far an uniform system in their Commercial Intercourse and Regulations might be necessary to their common Interest and permanent Harmony, and to report an Act relative to this great Object, which, when rati-

On the 26th of January, 1787, he was again appointed a member of Congress, under the Articles of Confederation. In the following spring he resigned his office of Attorney-General, and by the act of April thirteenth of the above year was made a Regent of the University.

The next year he represented Dutchess county in the Assembly of the State, which commenced its eleventh session on the ninth of January, at Poughkeepsie, and on the twenty-second of that month was appointed, for the fifth time, to the Congress of the Confederation.

fied, would enable the United States, in Congress assembled, effectually to provide for the same.'

"The Measure being approved, the Legislature of this State appointed their Commissioners, Messrs. Duane, Gansevoort, R. C. Livingston, Hamilton and Me. Mr. Gansevoort wholly declined the Appointment, and when the time approached for the Convention to assemble, Mr. Duane gave notice to his Colleagues of Indisposition, and Mr. Livingston of a probable Detention by Business for at least some days. I was Attorney-General, and at the time in Albany, attending the Supreme Court, and it became doubtful whether the public Business would not detain me. The late Mr. Justice Hobart and I were *Chums* there, and a *Casual* Conversation between Us, the Convention the subject, terminated in a Conclusion that the present Opportunity was not to be lost for obtaining a Convention to revise the whole of the Articles of Confederation as a Mode or System of *Government*; that I should consign over the Business of the Court to some Friend to conduct it for Me, and proceed to New York and communicate to Mr. Hamilton what had passed between us, which I did, and he instantly concurring, we set out for Annapolis, where we found commissioners from New Jersey, Pennsylvania, Delaware and Virginia. Here, the same being substantially communicated, and there being the like instantaneous concurrence, a Committee was appointed to prepare an Address to the States, which was reported and agreed to, the whole in the course of not exceeding three or four days, and We separated. The Draft was by Mr. Hamilton, and at unanimous request, although not formally one of the Committee. It is to be found printed in Cary's American Museum for April, 1787, and concludes with 'a Suggestion by the Commissioners, with the most respectful Deference, of their sincere Conviction, that it might essentially tend to advance the Interest of the Union if the States, by whom they had been respectively delegated, would concur themselves, and use Endeavors to procure the Concurrence of the other States, in the appointment of Commissioners to meet at Philadelphia, on the second Monday in May, to take into Consideration the Situation of the United States, and to devise such further Provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the Exigencies of the Union.' This the *Origin* of the present Constitution."

From 1789 to 1791, he was a member, from the State of New York (represented by six members), of the first Congress under the Constitution.

By an act, passed on the 6th of March, 1790, repealing a former act of the fourteenth July, on the same subject, he was appointed one of the commissioners, on the part of the State of New York, to decide the controversy between it and Vermont.

From 1791 to 1793, he was again a member, from the State of New York (six members again representing it), of the second Congress; on the 29th of January, 1794, he was appointed, by a majority of the Council of Appointment, the Fifth Justice of the New York Supreme Court.¹

In 1796, Judge Benson was chosen, by lot, one of the three commissioners, under the Jay Treaty, to decide as to the true St. Croix, with reference to the northeast boundary line. On the 25th of October, 1798, he made his report² to the President of the United States (John Adams), in behalf of himself and his brother commissioners, stating that a river, called the Schoodiac, emptying into Passamaquoddy Bay, was the true St. Croix intended in the treaty of peace of 1783, between the United States and Great Britain, so far as its great fork, where one of the streams came from the westward and the other from the northward, and that the latter stream was the continuation of the St. Croix to its source.³

¹ There was a collision between the Governor (George Clinton) and the Council relative to this appointment. (*See History of Council of Appointment in biography of Clinton.*)

² Senate Journal of the United States, third session, fifth Congress, 1798-9, p. 16.

³ The northeast boundary line between Great Britain and the United States, or rather between Maine and New Brunswick, had long been a matter of dispute.

In the second article of the Treaty of Peace of 1783 (which treaty was framed before New Brunswick had been separated from Nova Scotia, and while Maine was within the limits of Massachusetts), the boundary was thus defined (the framers regulated by a map made by John Mitchell, under the auspices of the British Board of Trade, and published in 1755), from the northwest angle of Nova Scotia, viz., that angle which was formed by a line drawn due north from the source of the St. Croix river to the Highlands; along the said Highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic, to the northwesternmost head of the Connecticut river, thence down through said river to latitude forty-five, and thence due westward.

In March, 1801, he resigned his justiceship on receiving the appointment, on the third of that month (called the midnight act of John Adams), as Chief Judge in the second circuit of the United

Doubts having arisen what river was truly intended under the name of the St. Croix, it was provided, in the fifth article of the treaty of amity, commerce and navigation between the United States and Great Britain, signed 19th November, 1794 (commonly called the Jay Treaty), that the United States and Great Britain should each appoint a commissioner, and the two agree in the choice of a third, or if not agreeing, each commissioner should propose one person and decide by lot; and that the decision of the commissioners, as to the subject matter, should be final and conclusive.

David Howell was appointed commissioner on the part of the United States, and Thomas Barclay on the part of Great Britain. Not agreeing on the choice of a third, Judge Benson was chosen by lot. The three commissioners met, the British agent claiming, as the true river, the river Schoodiac (an Indian name signifying "burnt land") emptying in the northwest side of Passamaquoddy Bay, an inlet of the Bay of Fundy; and the American agent, the river Magaguadavic east of the Schoodiac, emptying in the above bay on the east side, and long claimed by Massachusetts as the river meant in the treaty of 1783.

Judge Benson (acting as umpire) decided that the true river was the Schoodiac, and the other commissioners coincided with him. A difficulty then arose as to the source whence the line due north was to commence. Three points were contended for, viz., the source of the river's western branch, the outlet of the same branch from the lowest of the Schoodiac lakes, and the source of the northern branch of the river (which branch was called the Cheputnetecook), the last named source lying east of the first, but west of the outlet.

The commissioners at length acquiesced with Judge Benson, that the outlet should be considered the source designated in the treaty; but as there was a tract of valuable land, held under grants of the respective governments, between the two branches, it was finally decided that the source of the northern branch should be constituted the true source, giving to the United States the said tract, but to the British Government a larger territory above than if the outlet had been designated. A monument was erected in 1797 (a yellow birch tree hooped with iron, marked by the initials of the surveyors, Samuel Titcomb and John Harris, with the date of the erection), at the point decided upon, and called the Eastern Monument.

The question, however, as to the true point of the Highlands mentioned in the treaty of 1783, as the northwest angle of Nova Scotia, as well as to the north-westernmost head of the Connecticut river, still remaining open, the Ghent treaty (concluded December 24, 1814) provided for a final settlement of those points, as well as the adjustment of the whole boundary from the source of the St. Croix to the most northwestern point of the Lake of the Woods.

The two commissioners, appointed under the fifth article (Thomas Barclay by the British Government, and Cornelius Van Ness by the United States), after sitting near six years, could not agree, and the question (provided for in that contingency by the treaty) was left to the arbitrament of the King of the Netherlands. His decision was, however, protested against (January 19th,

States Court,¹ under a new arrangement of the United States Circuit Courts. He was deprived, however, of the latter office, in 1802, by a repeal, in that year, of the statute creating the new courts.

On the 3d of April, 1807, the Legislature appointed him, with Joseph C. Yates and others, on a commission in behalf of the State of New York, to meet and confer with commissioners on the part of New Jersey, respecting the eastern boundary of the latter State.

In December, 1812, he was elected, from the second district, to the thirteenth Congress, which commenced (it having had three sessions) on the 24th of May, 1813; on which day he took his seat; attended through the first session (viz., to August 2d), but subsequently resigned, William Irving supplying the vacancy, and taking his seat on the 22d of January, 1814.*

On the 24th of August, 1833, Mr. Benson died at Jamaica, Long Island, aged 87 years.

Mr. Benson was one of the founders of the New York Historical Society; was the first named among the corporators in its incorporating act of February 10th, 1809; and was appointed its first president, continuing in the station for eleven years.

He was of medium height, of compact frame, with light eyes and complexion. He possessed a calm, equable temperament,

1832) by the State of Maine, the district being separated from Massachusetts, and erected into a State on the 15th of March, 1820. It was not until the treaty of August 9th, 1842 (negotiated by Daniel Webster as Secretary of State of the United States, and Lord Ashburton on the part of Great Britain), that the question was settled by the final establishment of the whole boundary line from the monument at the source of the river St. Croix, designated by Judge Benson and the other commissioners, to the Rocky Mountains. By another treaty between the United States and Great Britain, made on the 15th of June, 1846, the line between the two countries was further continued west of the Rocky Mountains, from the point where it terminated, in the Webster and Ashburton treaty, along the forty-ninth parallel of north latitude to the middle of the channel which separates the Continent from Vancouver's Island, thence southerly through the middle of said channel and of Fuca's Straits to the Pacific Ocean.

¹ Hammond's Political History, vol. 1. 179.

² Journal House of Representatives, second session, thirteenth Congress, p. 246.

although quick and energetic in his movements; was cheerful in manner and fluent in conversation, abounding in anecdote. He was an antiquarian; colloquial in his manner as a speaker; brief and sententious, bordering on obscurity in his style of writing, and possessed a mind stored with classical, legal and historic knowledge.

In his private life he was irreproachable, while his public shone with examples of the purest patriotism and deepest devotion to duty. He was never married.

As a member of the Assembly from 1777 to 1781, he drafted almost every important bill that passed therein, during the Revolution, and while he was a representative in Congress, dating from 1780, he drew the bills organizing the executive department of the United States Government.

As a Judge of the Supreme Court of New York, he drew the first rules the court, under the constitution of the State, ever possessed, viz., those of April term, 1796.

His miscellaneous writings were voluminous. The most conspicuous were:

A Criticism on the "British Rule of 1756."

A Vindication of the Captors of Andre.

Remarks on "The Wife," of the Sketch Book by Irving.

A Memoir on "Names," read before the New York Historical Society, December 31, 1816.

This last is his most elaborate miscellaneous production. It is devoted to the origin and signification of Indian, Dutch, English and other names, relating to the territory formerly known as New Netherland, bounded on the east by the Connecticut and on the west by the Delaware rivers.

It is full of curious antiquarian learning, written in the author's usual condensed, quaint style.

As a specimen of this style we subjoin the following from an inscription upon a marble slab he caused to be affixed, to the memory of his friend, John Sloss Hobart, in the wall of the Supreme Court chamber in the City Hall of the city of New York.

"As a *man*, firm; as a *citizen*, zealous; as a *judge*, distinguishing; as a Christian, sincere. This tablet is erected to his memory by one, to whom, as a friend, close as a brother."

JAMES KENT,

Appointed, on the 6th of February, 1793, in place of John Lansing, Jr., Chief Justice. On the 2d of February, 1804, appointed Chief Justice. (See Biography.)

JOHN COZINE.

Appointed, on the 9th of August, 1793, in place of John Sloss Hobart resigned, on his attaining the age of sixty. Died on the 16th of September, 1793.

As Judge Cozine died before taking his seat on the bench, and consequently, never became a member of the Council of Revision, his biography is omitted.

JACOB RADCLIFF,

SON OF WILLIAM RADCLIFF,

Was born at Rhinebeck, Dutchess county, New York, on the 20th of April, 1764.

In 1779, he entered Nassau Hall, Princeton, New Jersey, and graduated thence in 1783.

In this same year he commenced the study of law in the office of Egbert Benson, then Attorney-General of the State of New York.

In 1786, he was admitted to the bar, and commenced the practice of the law at Poughkeepsie, in the same State.

In 1794-5, he was a member of the Assembly (17th session) from Dutchess county.

On the 23d of February, 1796, he was chosen by the Council of Appointment to the office of Assistant Attorney-General. Mr. Radcliff's district was composed of the counties of Orange, Dutchess and Ulster.¹

On the 27th of December, 1798, Mr. Radcliff was appointed a Justice of the Supreme Court of the State of New York, in place of John Cozine, who died shortly after his appointment.

In 1799, Judge Radcliff removed from Poughkeepsie to Albany.

By an act of April 8th, 1801, he was appointed, in conjunction with James Kent (then an Associate Justice), to revise the laws of the State.

In 1802, he removed to the city of New York, where he subsequently resided until his removal, in the latter part of his life, to Brooklyn.

In January, 1804, he resigned the office of Supreme Court Justice, and resumed the practice of the law, devoting himself to Chancery business.

On the 13th of February, 1810, he was appointed by the Council of Appointment to the Mayoralty of the city of New York, and on the 10th of July, 1815, was reappointed; both times in place of De Witt Clinton.

In 1821, he was a member, from the city and county of New York, of the State Convention which formed the Constitution of that year.

On the 4th of January, 1842, he was appointed, by the United States Circuit and District Courts, a commissioner under the General Bankrupt Act, passed at the first session (1841) of the twenty-seventh Congress, but on the twentieth of May in the above year he died at Troy, New York (while on a visit from his residence at Brooklyn), in the eighty-first year of his age.

Mr. Radcliff was an excellent Chancery lawyer. In the latter portion of his life, when engaged in preparing bills or answers in Chancery, or other legal papers, he was in the habit of dictating

¹ On the 27th of January, 1798, Coenrad E. Elmendorph was also appointed for the same district.

to an amanuensis, and such was his accuracy, there was seldom any occasion to alter a word or sentence of what he had dictated.¹

He was of remarkably handsome, dignified presence, over six feet in height, erect in person, with light eyes and complexion, and a mild, highly intellectual countenance. His manners were quiet and affable.

He was married, in 1786, to Julia, daughter of the Rev. Cotton Mather Smith, and granddaughter to the celebrated Cotton Mather. He left children.

Mr. Radcliff, while he sat upon the bench of the Supreme Court, viz., during the period from 1799 to 1803, made notes of the decisions of the court for publication, but the labors attendant upon his profession (which he had resumed after the resignation of his Judgeship) prevented him from completing his work. He, however, allowed William Johnson, the subsequent reporter, the use of his manuscripts of which Mr. Johnson availed himself in connection with his own notes and those of others, in his "Johnson's Cases."

HENRY BROCKHOLST LIVINGSTON,

SON OF WILLIAM LIVINGSTON, GOVERNOR OF NEW JERSEY,

Was born in the city of New York on the 26th of November, 1757.

In 1774, he graduated at Princeton College, New Jersey. Early in the summer of 1776, he entered the military service of his country as a Captain, and was one of the aids, with the rank of Major, of General Schuyler then commander of the northern department of New York.

He then became aid to General St. Clair, acting in that capacity at the investment of Ticonderoga, by Burgoyne, in the beginning of July, 1777, and witnessed the retreat of Colonel Warner's troops from Hubbardton. Attached, in the following September, once

¹ Letter of Lemuel Jenkins, Esq., of Albany, to the writer.

more to the military family of General Schuyler, he, while his commander was absent at Albany, joined General Arnold on the ninth of that month, and as a volunteer, participated on the nineteenth, in the first conflict of Gates with Burgoyne, at Bemis Heights.

In 1779, Mr. Livingston became the private secretary of John Jay, minister plenipotentiary to Spain; left with him in the frigate *Confederacy* on the twentieth October of that year, and remained about three years abroad. On his homeward voyage, in 1782, he was captured by a British cruiser and carried to the city of New York, but was liberated on the arrival of Sir Guy Carleton in May, 1783. Soon after, he went to Albany, studied law with Peter W. Yates, and in November, 1783, after the evacuation of New York by the British, commenced practice in the latter city.¹

In 1784, by the act of May 1st, granting additional powers to King's College, Mr. Livingston was made one of the first Regents in the University, named, to the number of twenty-four, in the act.

After the above year, he dropped the name of Henry and became known as Brockholst Livingston.

He was a member of the New York Assembly, in the twelfth session of 1788-9, from the city and county of New York; also in the twenty-fourth session of 1800-1; and was elected to the twenty-fifth session of 1802.

On the 8th of January, 1802, he was appointed a Justice of the Supreme Court of the State of New York.

In November, 1806, he was made a Justice of the Supreme Court of the United States; and in January, 1807, he resigned his Supreme Court Justiceship of New York.

He continued in the office of United States Justice till his death, which occurred during the sittings of the Court at Washington, on the 18th of March, 1823, in the sixty-sixth year of his age.

Mr. Livingston was slender in person, with light eyes and complexion, and marked features. His manners were cheerful and pleasing. He was fluent in conversation and accessible to all.

¹ See "Holgate's American Genealogy," p. 191.

At the bar he was powerful and eloquent, and was possessed of literary tastes and scholastic acquirements.

Mr. Livingston was thrice married; his first wife was Catharine Keteltas, by whom he had four daughters and a son. His second was Ann N. Ludlow, by whom he had two daughters and a son, and his third Mrs. John Kortwright, by whom he had two sons and a daughter.

He was one of the founders of the New York Historical Society and the second named in the act of incorporation.

SMITH THOMPSON,

Appointed on the 8th of January, 1802, in place of Egbert Benson, resigned on his appointment as Chief Judge in the second circuit of the United States Court. On the 25th of February, 1814, appointed Chief Justice. (See Biography.)

AMBROSE SPENCER,

Appointed on the 3d of February, 1804, in place of Jacob Radcliff, resigned. On the 9th of February, 1819, appointed Chief Justice. (See Biography.)

DANIEL D. TOMPKINS,

Appointed on the 2d of July, 1804, in place of James Kent, Chief Justice. Resigned, on his election as Governor, in April, 1807. (See Biography.)

WILLIAM W. VAN NESS,

SON OF WILLIAM VAN NESS,

Was born at Claverack, Columbia county, New York, in 1776. He did not receive a collegiate education.

He pursued his legal studies in the office of John Bay, of Claverack, and also in the city of New York; was admitted to the bar as an attorney, in 1797, and followed his profession in Claverack, until his admission in 1800, as a Counselor. He then removed to Hudson, in the above named county, which elected him a member of the New York Assembly, at the twenty-eighth session, 1804-5, and also at the twenty-ninth session, 1806.

On the 9th of June, 1807, he was appointed a Justice of the Supreme Court of the State of New York; and in 1821, was a member from Columbia county of the State Convention.

He continued as Justice until the 31st day of December, 1822, when his commission expired by the Constitution formed by the above Convention taking effect from that day.

He then opened a law office in the city of New York, but died at Charleston, South Carolina, on the 27th February, 1823, in the forty-eighth year of his age.

He was married in 1796 to Jane, daughter of John Bay, and had five children, three sons and two daughters.

Mr. Van Ness was large and portly in person, with light complexion, fine blue eyes and high forehead. He possessed great suavity of manner, displayed much imagination and eloquence at the bar and in conversation, and was very easy of approach.

JOSEPH C. YATES,

Appointed on the 8th of February, 1808, in place of Brockholst Livingston, resigned by reason of his appointment as Justice of the United States Supreme Court. Resigned on his election as Governor, in November, 1822. (See Biography.)

JONAS PLATT,

SON OF ZEPHANIAH PLATT,

Was born at Poughkeepsie, Dutchess county, New York, on the 30th of June, 1769.

He studied law with Colonel Richard Varick, and was admitted to the bar in 1790.

In the commencement of 1791, he removed to Whitesboro', in the then county of Herkimer (which at that period included all western New York), and on the seventeenth of February in that year, was appointed Clerk of the county.

In 1796, he was a member of the Assembly (19th session, beginning January 6th, and ending April 11th) from the counties of Herkimer and Onondaga, which latter had been erected from Herkimer 5th of March, 1794.

On the 19th of March, 1798, he was appointed Clerk of Oneida county, which, four days before, viz., on the fifteenth, had been erected also from Herkimer county; and from 1799 to 1801, he was a representative in the sixth Congress from the ninth district of the State.

From 1810 to 1813, he was a member of the New York Senate (33d, 34th, 35th and 36th sessions) from the western district.

At the April election of 1810, Mr. Platt was a candidate for the Governorship of the State of New York, against Daniel D. Tompkins, but was defeated.

In 1813, on the 12th of January, he was chosen to the Council of Appointment from the western district, and on the twenty-fifth February of the next year, was appointed a Justice of the Supreme Court of the State.

In 1821, he was a member (from Oneida and a part of Oswego counties) of the Convention that formed the second State Constitution.

On the 31st day of December, 1822, his commission as Justice expired, by reason of the Constitution of 1821 taking effect from that day, but in accordance with the provision in article ninth of

that Constitution, Mr. Platt continued to hold over until the 29th of January, 1823, when his successor (Hon. Jacob Sutherland) was appointed.

On his retirement from the bench, he resided at Utica, New York, and then in the city of New York, at which places he engaged in the practice of his profession.

He died at Peru, Clinton county, New York, on the 22d of February, 1834, in the sixty-fifth year of his age.

In 1790, he was married to Helen, youngest daughter of Henry Livingston, of Poughkeepsie, New York, and had eight children, two sons and six daughters.

Mr. Platt was tall and slender in person, of fine presence; quiet and thoughtful in demeanor, with dark eyes and complexion. He was dignified, although somewhat reserved in manner and speech.

JOHN WOODWORTH,

SON OF ROBERT WOODWORTH,

Was born on the 12th day of November, 1768, at Schodack, Rensselaer county, New York.

In September, 1784, he entered Yale College, graduated in September, 1788, and in that year commenced the study of law, at the city of Albany, with John Lansing, Jr., subsequently Chief Justice and Chancellor of the State.

In July, 1791, Mr. Woodworth was admitted to the bar; removed to Troy, New York, and commenced there the practice of his profession.

In 1792, he was appointed by the judges and supervisors of Rensselaer county, one of the New Loan Commissioners (in pursuance of an act of the Legislature, passed the 14th of March, 1792)¹ for loaning the said county's share (\$30,000) of the State Loan, to the several counties.

¹ Laws of New York (Greenleaf's ed.), vol. 2, p. 400

On the 7th of June, 1793, he was appointed Surrogate of Rensselaer county, by the Council of Appointment, and so continued till his appointment as Attorney-General.

On the 6th of November, 1800, he was chosen, by the Senate and Assembly of New York, one of the twelve Electors for President (Jefferson) from the county of Rensselaer; in 1803, he was a member of Assembly (26th session) from the same county; and from 1804 to 1807 was elected to the Senate of the State, from the eastern district.

On the 3d of February, 1804, he was appointed Attorney-General of the State, and in 1806 removed to Albany. He continued to hold the office of Attorney-General until the last of March, 1808. In 1811 (by an act passed April 4th) he was appointed, in conjunction with William P. Van Ness, reviser of the laws of the State; on the ninth of November in the next year he was chosen by the Senate and Assembly, one of the Electors for President (Madison), and in 1813 (March 3d) was made a Regent of the University. In that year the revision of the laws of the State, known as the Revised Laws of 1813 (according to the said act of 1811, and another passed April 12th, 1813), was published in two volumes.

On the 27th of March, 1819, he was appointed a Justice of the Supreme Court of the State of New York, in place of Ambrose Spencer, made Chief Justice.

On the 31st day of December, 1822, his commission as justice expired in consequence of the Constitution of 1821 taking effect from that day, but according to article nine of that Constitution, Mr. Woodworth continued to hold over; on the 7th of February, 1823, he was again appointed, and continued in the office until November, 1828, when he resigned under the Constitutional limit (retained from the Constitution of 1777), having arrived at the age of sixty.

Judge Woodworth died at Albany, on the 1st of June, 1858, in the ninetieth year of his age; in the enjoyment, to the last, of his faculties, both physical and mental.

He was of large and portly presence, with light eyes and complexion, and a countenance expressive of cheerfulness and benignity. He was very easy of approach, his manner affable, and conversa-

tion agreeable and fluent. His fellow-townsmen had been so long accustomed to his erect form, and quick active step among them, added to his urbanity of speech and manner, that at his death an important feature of Albany life seemed removed.

Illustrating the retention of his mental faculties, the following are mentioned:

In May, 1856, he delivered a clear and cogent argument before the Judges of the Supreme Court of the third Judicial District, in a case of ejectment, brought by the heirs of French against Lent, to recover lands illegally confiscated by the State, contrary to the Treaty of Peace of 1783; in which case the decision of the court was in favor of Judge Woodworth.

In September, 1857, he delivered another argument on a mandamus against the Comptroller of the State, to recover an alleged arrear of salary due him as Judge of the Supreme Court, under the Constitution of 1777. The argument was before the special term of the court, and was succeeded by another, upon the same subject, at the general term in December.

In these arguments (which were printed in pamphlet form) Judge Woodworth introduced biographical sketches as well as historical and personal reminiscences, interesting not only from their intrinsic worth, but from the choice and apt language in which they were clothed.

When it is considered that these arguments were prepared by a gentleman in his eighty-ninth year, who was Attorney-General of the State before the birth of the judges to whom they were submitted, they must be regarded as worthy of record.

Judge Woodworth was also the author of a little work, both pleasing and valuable, entitled "Reminiscences of Troy, from its Settlement in 1790 to 1807," full of historical sketches of the place, and biographical notices of many of its oldest inhabitants.

INTRODUCTORY REMARKS.

THE VETOES OF THE COUNCIL OF REVISION OF THE STATE OF NEW YORK, are here, for the first time, collected in a printed shape.

This Council existed from 1777 to 1821: a period of forty-four years, extending through the two wars of our nation with Great Britain. An independent branch of the legislative power, its vetoes illustrate the legal and constitutional history of our State jurisprudence. They embrace a great variety of questions in constitutional law and public policy, and possess general and permanent interest.

The distinguished men that composed the Council, anxious not only to vindicate these vetoes to the public, but knowing they would encounter the objections and arguments of the Legislature, framed them with great care, and they consequently will be found marked by vigor, clearness and logical precision, both in thought and expression.

The Editor has placed in a body those vetoes that received the sanction of the Council, separating in an appendix those objections which, although presented to it by those having in charge the bills upon which they were founded, did not receive the above sanction.

The Vetoes were compiled by the Editor from five manuscript folio volumes in the office of the Secretary of State at Albany.

VEToes.

On Wednesday the 28th January, 1778, the Council for revising all Bills about to be passed into Laws by the Legislature of the State of New York, met at the Chamber of his Excellency the Governor, in Poughkeepsie.

January 29. The Council appointed Richard Hatfield their Clerk.

POUGHKEEPSIE, *February 3, 1778.* Present—George Clinton, Governor; Robert R. Livingston, Chancellor; John Jay, Chief Justice; Robert Yates and John Sloss Hobart, Puisne Judges.

A bill entitled "*An act requiring all persons holding offices or places under the Government of this State to take the oaths therein prescribed and directed*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. In the oath of office prescribed for Sheriffs and Under Sheriffs, they are restrained from taking more than lawful fees or rewards "for the impanneling or returning of any inquest, jury or tales, in any court of the people of this State or between party and party, or for the serving any legal process whatsoever;" whereas if an express prohibition to the taking undue fees or rewards was deemed necessary, it should not be confined to these particular services, but ought to extend to all acts which Sheriffs or Under Sheriffs are bound by the duties of their offices to perform, and which acts may, without a particular enumeration, be comprehended under general descriptive terms.

2. The bill, after prescribing particular oaths for the Secretary of State, Sheriffs, Under Sheriffs and Clerks of Counties provides, that all other ministerial officers in this State shall take the following oath, viz.: I, A B (chosen or appointed as the case may be), to the office of for the county of do solemnly in the presence of, &c., &c. As this oath has express reference to county officers, it cannot with propriety be administered to, or with truth taken by the following ministerial officers, none of whom are appointed for any particular county, viz., the Clerk of the Supreme Court and Nisi Prius, the clerks, registers, and other officers in the Court of Chancery, Admiralty and Probates; nor can it reach the attorneys, proctors, and solicitors practising in those courts, or to brigadiers and other generals of the militia of this State who cannot come under the description of persons appointed or chosen to the office of for the county of

3. The President of the Senate when he shall administer the Government, is not named among those officers who are directed to take the oaths before persons to be appointed by commission in the nature of a *dedimus potestatem*, and therefore, as the bill now stands, must take the said oath before a justice of the peace in the county where he resides.

4. That only the Governor, Lieutenant-Governor, members of Senate and Assembly, Chancellors, Judges and Justices, Secretaries of the State, Sheriffs, Under Sheriffs, Clerks of Counties, and all military officers are required to take the said oaths before persons to be appointed by commission in the nature of a *dedimus potestatem*; and yet the rolls to be kept by the said persons are mentioned in the said bill as containing the oaths and subscriptions of the several officers of the Court of Chancery, Supreme Court, Court of Admiralty and Court of Probates, although none of the officers of the said courts, except the Chancellor, Judges, Sheriff and Under Sheriff, are directed to take the said oaths or make the said subscriptions before such Commissioners.

5. That the Justices of the Peace before whom the ministerial officers described in the bill are directed to take the said oaths, are not required to keep any rolls or record thereof, or to furnish the officers taking such oaths with a certificate thereof, nor is any provision made whereby, in case of the death of the Justice, the

people may be informed, or the officer obtain evidence of his having taken the said oaths, although such information and evidence is rendered highly important by the clause which declares offices *ipso facto* vacant, on neglect to take the oaths.

The Council object to the last clause in the bill which declares officers to be *ipso facto* removed and the offices *ipso facto* vacant from and immediately after neglect to take the oaths, for the following reasons, viz.:

1. That no time is allowed to the said officers to consider and make their election either to refuse or accept the said offices.

2. That the bill does not define what shall be deemed a neglect, but leaves it to be tried as a mere matter of opinion not reducible to a certain rule or standard.

3. That, as the persons appointed to administer the said oaths are bound to administer them to every officer who shall produce a commission or other proper evidence of his appointment or election and are not authorized previously to inquire into the neglect mentioned in the bill, very honest and good officers may, after having inadvertently been guilty of such neglect, take the said oaths, and enter on the execution of their offices, and that not merely at their own peril, but at the peril of the whole community; for should such officers be afterwards prosecuted for exercising offices which such neglect had rendered void and vacant, and be convicted thereof, all proceedings had before them, and all acts done by them, would of course be adjudged null and void.

Bill amended by Legislature in accordance with objections, and then approved by the Council.

POUGHKEEPSIE, *February* 20, 1778. Present—Governor Clinton; Livingston, Chancellor; Jay, Chief Justice.

A bill entitled "*An act to prevent the exportation of flour, meal and grain out of this State,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The Council object to the said bill as being inconsistent with the spirit of the Constitution of this State.

Because it recognizes the late supposed Council of Safety as a Legislative body, when in fact all Legislative power is to be exercised by the immediate representatives of the people, in Senate and Assembly, in the mode prescribed by the Constitution; for though the people of this State have, heretofore, been under a necessity of delegating their authority to Provincial Congresses and Conventions, and of being governed by them and Councils, and Committees of Safety by them from time to time appointed, yet this Council conceive that these were mere temporary expedients to supply the want of a more regular government, and to cease when that prescribed by the Constitution should take place, and can in no wise justify the appointment of a Council of Safety, other, perhaps, than as a committee to advise and recommend, after the organization of the present Government, and the actual entry of the Senate and Assembly upon the business of legislation; at which period the Council are of opinion that all Conventions and Councils of Safety had ceased and could not thereafter be instituted or appointed consistent with the Constitution of this State; and that the people did not give or delegate to their representatives in Senate or Assembly, any power or authority, at their discretion, to revive the Government by Conventions or Councils of Safety, or in any other manner to dispense with or suspend the Government established by the Constitution: these objections, in the opinion of the Council, operate with the greater force against the recognition of the Council of Safety, in question, as it was not even appointed by the Legislature, but by a number of the members who had resolved themselves into a convention, after the organization of the Government, instituted by the Constitution; and, therefore, although the rectitude and well meaning zeal of that Council of Safety may give them a claim to indemnity, neither the mode of their institution nor the edicts they made, ought, in the opinion of this Council, to be held up by the Legislature as constitutional or obligatory, especially as the Constitution does expressly "Ordain, determine and declare, that no authority shall, on any pretense whatever, be exercised over the people or members of this State, but such as shall be derived from and granted by them."

On these principles this Council find themselves constrained to object to the preamble of this bill:

1. It recognizes and speaks of this Council of Safety as if it had been a body constitutionally instituted and known to the law of the land; it speaks of their resolution as *laying an embargo* which it was expedient to *continue*, thereby intimating that the said resolution was obligatory on the people, when, in fact, it was not obligatory, nor were they in the least bound to obey or regard it.

2. On the same principle this Council also object to the first enacting clause:

It enacts that the said resolution of the Council of Safety, and the embargo *thereby laid* (except such parts thereof as are therein-after repealed), shall *stand*, and be confirmed and *continued*, thereby plainly giving countenance to the said resolution, and evidently acknowledging it to have force and validity.

The second, third and fifth clauses, are under the like predicament with the first, and the Council object to them on the same principles.

The Council object to the sixth enacting clause as inconsistent with the spirit of the Constitution:

1. Because this clause supposes the continuance of County and District, or Precinct Committees, and thereby implies that they are necessary and proper to the government of this State. But the government established by the Constitution, knows of no County or District, or Precinct Committees, and being appendages to and parts of the same system of expedients with Conventions and Councils of Safety, they ceased together, and cannot, consistent with the Constitution, be revived.

The Council object to the court instituted by this clause for the trial of intentional exports without license.

Because, in this court, the person who makes the seizure is to impanel the jury, yet no power is given to compel their attendance; he is to sit as Judge to determine the propriety of evidence and challenges, and yet in certain cases must be the prosecutor.

In this court the party prosecuted may be proceeded against in his absence, and condemned to forfeit his property without a hearing, for notice to the person then having the care and possession of the flour, &c., is no notice to the owner; nor in case such person

be a slave, is any notice to be given to the owner of the flour, unless he happen to be known to the person who seized it.

In this court no means are provided whereby the defendant can compel the attendance of his witnesses.

In this court the defendant cannot compel a speedy trial, for the person who made the seizure is at liberty, by the bill, to cause the inquiry to be made when he may think proper.

In this court provision is made for the payment of costs and charges only on the conviction, but not on the acquittal of the defendant, so that the court and jury, as well as witnesses, will be interested against him.

The Council object to the said bill as being, in their opinion, inconsistent with the public good:

1. Because, as the bill recognizes the Council of Safety, and their resolution for laying an embargo, in terms which amount to an acknowledgment of their right to make laws, all the other resolutions they have passed must be deemed of equal validity with this; whereby a number of new laws, which have never been under the consideration of the Legislature, and perhaps repugnant to the Constitution, will be introduced among the laws of this State.

2. Because, in the opinion of the Council every freeman in this State has a right to do any act which is not forbidden by the laws of God or of the State, and therefore that such acts cannot, consistent with the public good, be deemed to have been illegal by laws afterwards made, and which did not exist at the time when such acts were done: Wherefore, the Council object to that part of the first clause in the bill which retrospects and attempts to validate and confirm certain parts of the resolution of the Council of Safety *from the time it was made and published.*

3. Because, however expedient an embargo may be, yet liberty is not granted for the transportation of flour, &c., from the southern States through this State to New England.

4. Because, it is not, in the opinion of this Council, consistent with the public good that the first magistrate of the people should be diverted from the important duties of his office by a necessity of personally hearing and trying the merits of the numerous applications which will be made to him for licenses from

different parts of this and the neighboring States, as well as from the commissaries of the army; which business it will be very difficult for him to transact when called into the field at the head of the militia.

5. Because, as the Governor is the only person authorized by the bill to grant licenses, it imposes undue hardships and expenses on the inhabitants of those parts of the State who are remote from the place of his residence.

6thly. Because, as by the bill mere suspicion alone, without any proof or evidence of intention to export without license, is sufficient to justify any committeeman, justice, sheriff, or other peace officer to seize and detain flour, &c., passing through any part of the State, the Council apprehend that the domestic trade of the people of this State with one another will be subjected to difficulties and interruptions, and innocent men often distressed especially as on such seizures they will be obliged to maintain their cattle, horses, and slaves at the place in which they may be seized, until the person who seized them may think proper to give them a trial, and which, if there be malice in the case, will on various pretenses of witnesses absent, &c., be unnecessarily protracted and delayed.

7. Because, although the bill makes it lawful for the Governor, with the advice of two members of the Legislature, to grant licenses for exports, it does not require him or make it his duty to do it, so that should he decline acting as a commissioner for granting those licenses, none will or can be granted, and consequently all exports, even for the use of the army, must cease. The members of the Legislature are also left at liberty by the bill either to attend the Governor when called, and advise him on the propriety of granting particular licenses or not, so that should they find it inconvenient to be often called from home on this business without compensation and therefore decline it, in that case also, no licenses can be granted.

8. Because, as the bill is to continue in force until repealed, and as the future meeting of the Legislature may be rendered uncertain by the military operations in this State, the embargo may exist longer than the necessity which dictated it, in which case the trade of this State would be injured, and the neighboring States stimulated to retaliation, especially considering how greatly they

were censured by this State for laying embargoes when not pressed thereto by necessity.

Notwithstanding the objections, the Legislature passed the bill, with a slight verbal amendment, into a law.

POUGHKEEPSIE, *March 25th*, 1778. Present—Governor Clinton; Jay, Chief Justice; Yates, Justice.

A bill entitled "*An act to regulate elections within this State*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because the bill directs that the clerk of the Senate in every year, between the first day of February and the first day of April, shall give notice in writing to the several sheriffs, of the number of Senators, &c., to be for that year elected, and that the sheriffs transmit copies of such notices to some one of the Justices in such precinct district, &c., so that should the clerk of the Senate happen to die between those two periods in the recess of the Senate (no provision being made for so important a contingency) the design of the bill in this instance may be defeated, unless indeed the Legislature should be seasonably convened for the purpose and the Senate appoint another.

2. Because the Constitution of this State does, among other qualifications to entitle a person to vote at an election for a member of Assembly, require that such person should, within six months immediately preceding such election, have been rated, and actually paid taxes to this State; and yet, by the bill in question, persons not so qualified are authorized to give such vote; and although the omission of a timely tax may for the present year render such qualification unattainable, yet, in the opinion of the Council, such omission can neither justify or excuse the dispensing with such qualification, at least for the years then ensuing.

3. Because the said bill directs that a box with a lock, and a hole in the lid sufficiently large to admit a ballot, shall be provided and kept by the inspectors at elections, and that whenever they adjourn the poll, the poll-lists shall be put in the said box with

the ballots, and shall be locked in the presence of all the inspectors; the key to be delivered to such one, and the box to such other of them as the majority shall nominate, &c. But this Council cannot perceive the use of causing the said box to be so locked and delivered while the hole in the said lid through which ballots may be shaken out, or put in, is permitted to remain open.

4. Because the bill directs the sheriffs to return transcripts of the poll-lists for Senators, taken at elections in their respective counties, to the secretary's office "from whence due notice in writing shall without delay be issued and transmitted to each of the persons respectively who shall appear to be Senators, elected by plurality of voices in the districts, to the end that they may give punctual attendance and take their respective seats," &c. But the said bill does not direct by whom such poll-lists shall be canvassed and the votes estimated, nor by whom such notice shall be given; for although, from the said returns being made to the secretary's office, and the notice aforesaid issued from thence, it would seem as though the secretary is intended, yet in the opinion of this Council it does not necessarily follow that he is the person, and if he was, yet in the opinion of the Council, this important business ought expressly to be made a part of his duty, that the public may have the security of his oath of office.

5. Because the bill doth expressly prohibit all persons other than the sworn clerks to make or take any poll-lists at any of the said elections, on pain of being committed to the gaol of the county, for a space not exceeding thirty days, thereby depriving the people of this State of a right which, in the opinion of the Council, they ought to enjoy in common with all other freemen, of writing or committing to paper those or any other fact or facts which may happen.

6. Because the said bill authorizes and requires the inspectors to commit to gaol, for a space not exceeding thirty days, all persons who shall make or take poll-lists as aforesaid, or be guilty of disorderly conduct at the said elections, or of using corrupt or indirect means to influence the electors; as these offenses may not always be committed under the eye of the inspectors, but made known to them by evidence on accusation, this Council are of opinion that the party accused ought in all such cases to have the

benefit of a trial by his peers, before he shall be subjected to so grievous a punishment, and the inspectors authorized only to bind them over to such court as is or may be authorized to take cognizance thereof, and this Council consider the said power to commit, so far as it respects persons who shall attempt to influence electors, as the more extraordinary and improper, because a subsequent clause in the bill subjects such persons to a penalty of five hundred pounds, on conviction of the said offense.

7. Because the said bill disqualifies and incapacitates to vote or hold offices, all such of the inhabitants as hereafter shall, or since the 9th day of July, 1776,

(1.) Have, before any Congress or Convention or Committee or Council of Safety, or Committee or Commissioners of Conspiracy, acknowledged the sovereignty of the British King and Parliament over this State.

(2.) Or denied the authority of the present Government and Legislature of this State.

(3.) Or of the former government thereof by Congresses or Conventions, Committees or Councils of Safety, and other committees.

(4.) Or the independency of this State.

(5.) Or taken arms with the enemy against these States.

(6.) Or have held commissions under the British King or Parliament.

(7.) Or being out of the power of the enemy, have gone to them to supply them with provisions, &c.

(8.) Or procuring others so to do.

(9.) Or having gone and continued with the enemy without special license.

(10.) Or have held a correspondence with the enemy prejudicial to these States.

(11.) Or have counseled or encouraged any inhabitants of these States to acknowledge allegiance to the British King or Parliament, or

(12.) To disavow the authority of the Congress, or of the Provincial Congresses or Conventions or Legislatures of this State, or

(13.) To disaffect any person to the independence, government and legislature of this State.

To the said disqualifications, collectively considered, this Council think it their duty to object, because the Constitution of this State hath expressly ordained "that every elector, before he is admitted to vote, shall, if required by the returning officer, or either of the inspectors, take an oath or (if of the people called Quakers) an affirmation of allegiance to the State," from whence, in the opinion of this Council, it clearly follows that every elector who will take such oath, has a constitutional right to be admitted to such vote, and therefore that the Legislature have no power to deprive him thereof, and more especially for acts by him done prior to the date of the said Constitution, which was the 20th day of April, 1777, of which acts the convention, by whom that Constitution was made, had ample cognizance.

Because, to punish men for acts by laws made subsequent to the commission of such acts, hath, by all civilized nations, been deemed arbitrary and unjust.

Because, the said bill takes away all benefit of repentance and possibility of reconciliations from such as, having in times past been unfriendly to the American cause, may now be good subjects of this State.

Because the said disqualifications, in the opinion of this Council, savor too much of resentment and revenge to be consistent with the dignity or good of a free people.

Because the said disqualifications (supposing them to be constitutional and proper) are not limited to take place only on the conviction of the offenders in due course of law.

Because, as a great number of the offenses to which such disqualifications are annexed, are, by the laws of this State, punishable with death, it appears to this Council improper as well as unnecessary to enact that the persons thus to die shall be so disqualified.

This Council doth particularly object to the disqualifications contained in the third and twelfth articles above specified.

Because, thereby, all persons are disqualified, who have, before any committee, &c., disavowed or have counseled others to disavow, the authority of a late Convention and Council of Safety, who, being as such, self-constituted and possessed of no power granted by or devised from the people, did undertake to legislate for them, and by certain of their resolves to create capital offenses;

for that, in the opinion of this Council, the people of this State had, and have an undoubted right to disavow and deny the authority of the said Convention and Council of Safety, and to counsel and encourage others so to do.

8. Because although the bill directs that the members of the Legislature to be elected, shall meet at a certain time therein specified, yet no place for such meeting is thereby assigned, nor is any provision made for causing the same to be fixed and made known.

Notwithstanding the objections, the Legislature passed the bill into a law.

POUGHKEEPSIE, *March 25, 1778.* Present—Governor Clinton; Jay, Chief Justice; Yates, Justice.

A bill entitled "*An act for raising moneys to be applied towards the public exigencies of this State,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because the said bill, after imposing a tax of a penny half-penny in the pound on all personal property, proceeds to assess on all traders and manufacturers in this State, a partial tax of fifty pounds on every thousand pounds which they may respectively have gained in their said occupations since the 12th day of September, 1776, over and above the said general tax of one penny half-penny in the pound, to be discovered by their oaths respectively.

This Council are of opinion that an equal right to life, liberty and property is a fundamental principle in all free societies and States, and is intended to be secured to the people of this State by the Constitution thereof; and, therefore, that no member of this State can with justice be constrained to contribute more to the support thereof, than in like proportion with the other citizens, according to their respective estates and abilities. Wherefore this Council consider the clause in question as being inconsistent with the spirit of the Constitution.

2. Because in the opinion of this Council the public good requires that commerce and manufactures be encouraged and regu-

lated, and that the clause in question manifestly tends to oppress, discourage and expel all persons concerned in either, which to this Council appears the more extraordinary, as divers of the said manufactories were established by public bounties, and encouragement given as well by Congress as by this State.

3. Because this Council can conceive of no possible reason or pretense for this unprecedented and odious discrimination (none being assigned by the bill) unless perhaps a supposition that the said traders and manufacturers have unduly acquired the said gains. Should this have been the principle of the bill, the Council still think it difficult to suppose that the Legislature should view every trader and manufacturer in the State as being under that predicament, and not presume that any of them have, in so long a space of time, fairly acquired one thousand pounds or more; besides this Council deem it repugnant to every idea of justice thus, without any open charge or accusation of offense, and without trial, indiscriminately to subject numerous bodies of free citizens, distinguished only by the appellations of traders or manufacturers, to large penalties not incurred on conviction of disobedience to any known law, and couched under the specious name of a tax.

4. Because the bill directs that the tax thereby imposed on appropriated unimproved lands shall be assessed by such three of the supervisors in each county as a majority of them shall nominate. But the Constitution of the State doth expressly ordain that "assessors and all other officers heretofore eligible by the people, shall always continue to be so eligible in the manner directed by the then present or future acts of the Legislature." Wherefore this Council are of opinion that although the Legislature may constitutionally direct the manner in which the people at large shall exercise this important right, yet that the Legislature hath no authority to divest them of it, and transfer it to the supervisors, nor can the Council perceive any objection to this business being done by the ordinary assessors, especially as all unimproved lands, which are not now comprehended in any precinct or district, may be annexed thereto.

Notwithstanding the objections, the Legislature passed the bill into a law.

POUGHKEEPSIE, *March 30, 1778.* Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act for raising seven hundred men, to be employed in the defense of this State,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

The Council object to the said bill becoming a law of this State, because repugnant to the Constitution thereof.

It recites that the Council of Safety *did*, by resolutions made and passed the fourth day of January last, revive certain resolutions of the Council of Safety of the thirty-first day of July last, previous to which fourth day of January, the Government was organized and a Legislature, consisting of a Senate and Assembly, were regularly chosen and actually existing. And by a subsequent clause of the said act, declares that all and singular the powers and authorities vested in the assessors appointed by virtue of the resolution of the Council of Safety of the thirty-first day of July, *revived* and extended as aforesaid (to wit, by the Council of Safety of the fourth day of January last), shall henceforth determine and become void, thereby recognizing a power in the said Council to revise and extend laws which should, by such revival continue in force till repealed, when, in fact, such power exists only in the constitutional Legislature of this State.

Notwithstanding the objections, the Legislature passed the bill into a law.

October 28, 1778, the Council appointed Stephen Lush their Clerk.

POUGHKEEPSIE, *November 5, 1778.* Present—Governor Clinton; Jay, Chief Justice; Hobart, Justice.

A bill entitled "*An act for raising a further sum by tax, to be applied towards the public exigencies of this State,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The Council, deeply impressed with the opinion of the expediency of levying a general tax, regret the necessity imposed upon

them by their duty of objecting to this bill, and the more so, as only one single clause in it appears to them exceptionable.

The said bill, after imposing a general and equal tax of a penny half-penny in the pound on all personal property within this State, proceeds as follows:

"Whereas, many persons in this State, *taking advantage* of the necessities of their country, *have*, in prosecuting their private gain, amassed *large sums* of money to the great prejudice of the public, and ought, therefore, to pay an extraordinary tax, and it will be impossible for the assessors, with any degree of certainty, to ascertain the profits made by such persons in manner aforesaid; be it therefore enacted, by the authority aforesaid, that the assessors shall, and are hereby required to, assess *all such persons*, respectively, whether fixed residents of this State or residing therein occasionally, for the purpose of any trade, commerce or traffic for their faculty, or the means that have been used by them, respectively, for enriching themselves, at such rates, respectively, over and above the assessment hereby required on their real and personal estates, respectively, as they, the assessors, shall in their judgment think proper; which assessment last aforesaid shall be included in the personal tax lists, and shall in all things, in and previous to the levy thereof, be subject to the regulations herein above prescribed respecting the personal tax lists."

The Council object to this clause as being, in their opinion, inconsistent with the spirit of the Constitution.

1. Because an equal right to life, liberty and property is a fundamental principle in all free societies and States, and is intended to be secured to the people of this State by the Constitution thereof; and, therefore, no member of this State can constitutionally or justly be constrained to contribute more to the support thereof than in like proportion with the other citizens, according to their respective estates and abilities.

But if the Council should admit (which they do not) that this principle is false and that unequal taxation is justifiable, yet they are of opinion that, whenever the Legislature imposes a tax on a man for his faculty or means of acquiring property, they are supposed to mean only those faculties or means which are lawful, because to tax a faculty is to tolerate it—vice not being in its

nature a subject of taxation. And yet it appears on the face of this bill, that the faculty thereby taxed is the faculty of taking advantage of the distresses of the country, and amassing large sums of money to the prejudice of the public. With equal propriety might the like extraordinary tax have been imposed on the faculties of making money by gaming, keeping disorderly houses, false swearing, lying and slandering, all which vices, like those mentioned in the bill, are injurious to the common weal, and like them ought to be punished, not taxed.

2. Because, as the bill assigns the demerits of the several persons described in the clause under consideration, as the reason for their being subjected to this extraordinary assessment, it would seem as if the Legislature intended thereby to punish them. The clause, viewed in this light, is still exceptionable, because, however proper it may be to punish these practices, yet the manner of doing it prescribed in this clause, is, in the opinion of the Council, unconstitutional.

By the principles of the Constitution of this and every other free State, except in cases of attainder for high and dangerous crimes and misdemeanors, no citizen is liable to be punished by the State but such as have violated the laws of the State, and every citizen is to be considered innocent by the State until he hath broken its laws—offenses only against the moral law or laws of God, being cognizable by him alone. Supposing, therefore, that the persons aimed at in the bill have acquired riches immorally, yet, if they have acquired them in a manner which the Legislature has not thought proper to prohibit, they are not obnoxious to human punishment, however liable they may be to Divine vengeance. But, if on the other hand, these persons have acquired riches in a manner prohibited by the laws of the land, they ought to be tried and punished in the way directed by these laws, and not subjected to double punishment: first, in the usual course of justice, and secondly, by this extraordinary tax imposed by an act made subsequent to the commission of the offense; and that too without any other trial than what the assessors, who are not authorized by the Constitution to distribute justice, may think proper to give them.

3. Because the Legislature are not authorized by the Constitution to delegate the right of determining, at discretion, how much shall be levied on all or part of the people to any body of men whatever, much less to the assessors. It being the proper business of the Legislature to ascertain and declare the rate at which the people shall be taxed, and of the assessors to determine only the value or amount of the property of each individual, and by comparing that amount with the rate to compute, not appoint, how much each person is to pay; and yet the bill refers it entirely to the discretion and judgment of the assessors to determine how much or how little the persons described in it shall be taxed for their faculties or means of getting money,—nor is the reason assigned for this in the bill of any weight, viz., *“that it is impossible for the assessors, with any degree of certainty, to ascertain the profits made by such persons.”* The assessors cannot, with a greater degree of certainty, ascertain the amount of many personal estates in the country, and yet the bill obliges them to assess those estates a penny half-penny in every pound they consist of.

The Council further object to the above recited clause in the said bill as being, in their opinion, inconsistent with the public good:

1. Because, should the Legislature exercise a power and go into the practice of taxing people, not according to the value and amount of their respective estates, but the particular manner in which they were acquired, all security for property will be at an end; no man being able to foresee whether the particular manner in which he legally acquires his estate, will at a future day be disapproved by the Legislature and destroyed by extraordinary assessments. So, that should this principle and practice obtain, the people would hold their estates, not by the Constitution and law of the State, but the mere will of the Legislature and mercy of the assessors.

It is an undoubted right of a freeman (whatever ill use he may make of it) that where no prices are fixed by law he is at liberty to ask what price he pleases for his land or goods, and he is amenable only to God and his conscience if he asks too much. To subject him therefore to an extraordinary tax, limited only by the discretion of an assessor merely because he happened to dispose

of his property at a price which the Legislature think but did not declare to be unreasonable, would, in the opinion of this Council, be an evasion of the rights of the people and a dangerous precedent.

2. Because the description of the persons subjected to this extraordinary tax is so uncertain as that the assessors will have scarce any other rule than mere opinion or caprice to direct them. A circumstance which in penal law (which are always to be construed strictly) should be carefully avoided. The bill declares that many persons in this State, *taking advantage* of the necessities of their country *have*, in prosecuting their private gain, amassed *large sums* of money to the *great prejudice* of the public; and then enacts that the assessors shall assess all *such persons* at such rates over and above the general assessment as they, the assessors, shall in their judgment think proper. This description gives birth to the following doubts:

(1.) Whether it includes all persons in the State who have ever amassed large sums of money in this way, or only such as have done so within late years; and if the latter, within what time.

(2.) What is to be deemed a taking advantage of the necessities of the country, because all the people in this State who had any thing to sell have so far taken advantage of the necessities of those who were obliged to buy, as that no commodity can now be purchased for less than five times as much as before the war.

(3.) How many hundred or thousand pounds are the assessors to deem a *large sum* of money, those only who have made *large sums* being subjected to the extraordinary tax.

(4.) What quantum or species of prejudice to the public comes within the description of the words *great prejudice* to the public, for the bill limits the assessment to those only who have done *great prejudice* to the public.

It is to be observed, that the description in the preamble is adopted by the enacting clause, and is therefore to be considered as part of it.

3. Because every man whom the assessors shall judge to come within the above description will be most essentially affected by it. He will be held up by his fellow-citizens as in a certain degree infamous, and the whole or great part of his estate may be taken from him. Wherefore, in the opinion of this Council, no freeman

of this State ought to be condemned to such extensive evils without having been previously found to deserve them, on a fair and solemn trial; a trial which every assessor (not being obliged to give) may not be disposed to grant or indeed be competent to hold. Besides, the bill does not direct the assessors to give the party any trial at all, but leaves them to make up their judgments on any evidence or principles they may think proper. Hence the assessors will have an opportunity of subjecting the most innocent persons in the State to destruction in every case in which they may be inclined thereto by caprice or malice.

4. Because, although great injuries may be done to innocent persons by assessors under this bill, yet no appeal lies by the bill from their judgments. The supervisors may perhaps direct them to reconsider it, but they may still if they please abide by it, and in that case the supervisors must see it executed.

5. Because this unprecedented extraordinary tax will induce all who may fear the operation of it to remove with their property to some other State which will give them greater security for the enjoyment of it, whereby many citizens and large sums of money, which, in the ordinary constitutional way of taxation, would yield a very considerable revenue to the State, will be lost. Nor will strangers be easily persuaded to settle in a State whose citizens find it necessary to remove from it.

6. Because, although the practices of many persons concerned in trade and in buying and selling may be injurious to the public weal, yet, in the opinion of this Council, those practices call rather for general and prudent regulations to prevent the evil in future, than for such indiscriminate and unconstitutional modes of punishment by *ex post facto* laws.

The Assembly refused to pass the bill; consequently it did not become a law.

POUGHKEEPSIE, *March 14, 1779.* Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act for forfeitures and confiscations, and for declaring the sovereignty of the people of this State in respect of all pro-*

perty within the same," was before the Council, which adopted the following objections, reported by the Chancellor, viz. :

1. Because it is in some instances repugnant to the plain and immutable laws of justice which no State can with honor throw off.

2. Because it is obscure and contradictory, and founded upon principles which vary from and clash with each other.

3. Because, it in many cases tends to deprive the well affected inhabitants of this State of their just rights, and subjects them to the grossest oppressions, if the commissioners should incline to abuse their trusts.

4. Because the means for carrying it into execution are inadequate to the end.

5. Because it does not pay proper attention to the circumstances of the less wealthy subjects of the State, or to the means of rendering the forfeitures most beneficial to the community.

1. Because it convicts and punishes the persons named in the bill without affording them an opportunity of availing themselves of a trial by jury, to which the Constitution impliedly entitles every subject, how deep soever his guilt, unless by his refusal to submit to such trial, after a day given, he may be presumed to have relinquished such privilege; for the Council conceive, that the best warrant, to proceed by bill of attainder, is the neglect or refusal of the criminal to submit to the ordinary course of trial; and they are confirmed in this opinion, when they reflect that the Legislature of England never departed from this rule, except when parties ran high, and in the reigns of arbitrary princes.

2. Because, though the law provides that the attainder and conviction shall not affect the lives of the persons named in the bill, but subjects them to a trial at law, in consequence of which they may be capitally punished, yet it does not provide that restitution be made of their estates, or a compensation therefor, even though upon such solemn trial they should appear to have been innocent and their names to have been wrongfully inserted in the bill; thereby holding up the idea of a State wresting from an unfortunate though guiltless individual that property which they are bound to protect him in the enjoyment of.

3. Because the fourth clause enacts that when any absent person shall be indicted for high treason for adhering to the enemies

of this State, notice of such indictment shall be given in manner prescribed by the act, and that if he does not come in within the time limited, he shall be *ipso facto* convicted and attainted, and incur the penalties of high treason with respect to the forfeiture of his property. The fifth clause directs the mode of taking indictments against absentees, and the trial of offenses committed out of their respective counties. The sixth, prescribes the manner in which the indictments taken at the Quarter or General Sessions of the Peace shall be brought up to the Supreme Court, where the person indicted comes in and surrenders himself. The seventh clause is in the words following: "And be it further enacted, by the authority aforesaid, and it is hereby provided, that no attainder by virtue of this act shall be construed to affect the life of any person, *except of such persons as shall render themselves within the time and in the manner herein before limited and directed*, as to prevent any person, *except as before excepted*, from being apprehended and tried for high treason, in the ordinary course of law, anything herein contained to the contrary notwithstanding."

This whole clause, as it stands, connected with those that precede it, is involved in such obscurity that this Council are at a loss to affix to it any precise meaning; and the only construction which the words warrant is too remote from common sense and common justice to be that which the Legislature intended it should bear.

As some of the former clauses of the act absolutely convict and attain the persons therein named and described of high treason, this proviso seems to have been designed to restrain the operation of such conviction and attainder so far as it might affect the lives of such persons; and yet it is so worded that those who are the proper objects of such restriction, to wit, those who surrender themselves within the time and in the manner limited by the law by being within the exception, are out of the proviso, and expressly excluded from being tried in the ordinary course of law. So that, while the act directs the sheriff to issue his proclamation calling in persons indicted, in order to their trial under a severe penalty, it excludes them from the benefit of such trial if they come in; and if they should be of the number of those who have been attainted and convicted, it leaves the law to operate against

them, while it restrains it with respect to those who do not surrender themselves till after the time limited is expired, or who may be taken flying from justice.

The Council therefore object to the preceding clause, and those immediately connected with it: first, on account of their obscurity; second, because of their manifest injustice.

They object to the second clause of the bill, because it is directly contrary to the spirit of the Constitution, and to the attention which is due to the rights of the subjects of this State.

After reciting that a number of persons therein mentioned, who were dead at the time of passing the act, had been guilty of treason during their lives, it forfeits the estate, real and personal, of which they or either of them were severally and respectively seized on the 9th July, 1776. As this clause affects the heirs, executors, administrators or legatees of the persons named, who, being charged with no crime, the law will presume to be good subjects of the State, and in whom the property intended to be forfeited has legally vested. To divest them of it by a law of the State without hearing, is to erect the Legislature into a new Court of Judicature, not proceeding "according to the course of the common law," and to deny to the subjects of this State the benefit of a trial by jury, to which they are entitled "in all cases in which it hath heretofore been used in the Colony of New York." For though the Constitution admits of acts of attainder under certain restrictions, yet this clause can neither be considered as within the letter or the spirit of such admission. It is not within the letter, because it contains no words of attainder or conviction; nor within the spirit since it does not punish the traitor, but imposes hardships upon the innocent. If, however, the Legislature could legally pass such laws, still, as this has a tendency to deprive widows and fatherless children of their property it ought to have been drawn with peculiar caution. It should have alleged the particular treason of each individual, and the time when committed, in order that the heir or legal representative might have been enabled at some future day to prove (if such was the fact) that the Legislature had not been fully informed.

1. The ninth clause of the said bill forfeits the real property, rents, arrearages of rents, &c., belonging to the inhabitants or sub-

jects of Great Britain on the 9th day of July, 1776, or since. To this the Council object.

(1). Because it is impolitic and repugnant to the strict rules of justice. Civilized nations, before a declaration of war, give notice to the subjects of the States with whom they are at variance to remove their property. The reason operates more strongly at this great Revolution, from the close connection which heretofore subsisted between this State and the now subjects of Great Britain, who, if not unfriendly in their conduct, should be admitted to dispose of their estates; or, what better policy would dictate, to settle on them.

(2). Because it injures the national character of the State; may occasion reciprocal forfeitures and lessen the emigrations of people of property from the British dominions, from whose imported wealth greater advantages might be expected than from the pit-tance produced by the sale of their lands.

(3). Because it makes an ill return for the spirit and liberality with which our cause has been defended by many worthy patriots in the British dominions; the provisionary clause in their favor being merely nugatory, promising nothing certain and requiring proofs which it may be difficult or dangerous for the subjects of another power to make.

(4). Because it is vague and uncertain, the words *inhabitant or subject* in the disjunctive admitting of very great latitude; under the last of which names may be comprised every inhabitant of this country, born in the British dominions, who has not, by some decisive act, renounced his former allegiance to the King of Great Britain, and perhaps every person within the enemy's protection, however involuntary he may be so.

2. The Council further object to the said law:

Because it has no stated principle, sometimes referring back the forfeitures only to the 16th of July, 1776, thereby founding the right of confiscation on the law passed on that day. In other cases going back to the ninth day of July in the same year, and in cases of conviction for treason in another State, referring to the time of the *offense committed*, though possibly such treason might have been prior to our Declaration of Independence.

3. Because the powers given to the commissioners are vague and undetermined, and though in some cases so exorbitant as to be oppressive and unjust, yet in others insufficient to answer the end proposed.

(1.) They have no power to send for persons or papers to examine into titles; to commence suits where frauds are suspected, or to inform themselves of what mortgages, judgments or other incumbrances may lie against the land offered to sale, so that every purchaser must buy at his own risk (unless in those cases in which the commissioners put off the sale for two years), without any knowledge of the title under which he holds, and must, at his private expense, commence suits for the recovery of the lands bought where the same are held against him; in which suits it will be incumbent on him to prove that the right existed in the person convicted and attainted; nor is any remedy given him if he should fail in such action to recover back his purchase money from the State. These several difficulties must greatly lessen the value of the lands sold, be equally disadvantageous to the possessors and the State, and prove the fertile parents of numerous law-suits.

4. The Council object to the third clause of this bill:

Because it enacts "That the commissioners shall be indemnified in seizing and possessing themselves of estates *reputed* to have belonged to any of the persons above named, on the said 9th day of July, 1776, in holding and leasing the same for the use of the people of this State, until the same shall be recovered against the said commissioners by due course of law, *any* conveyance prior in date to that day, notwithstanding; and all titles derived to such estates respectively, by virtue of such conveyance or conveyances, shall, after two years from and after the seizing and possessing aforesaid, of such estates respectively; and no suit commenced and prosecuted to a trial for the recovery of the possession of the same within that time, be forever and absolutely barred," &c.

By this clause the Commissioners are impliedly restrained from selling one foot of land, till the expiration of two years, which may belong to any of the persons *named* in the bill, since that time is allotted to the proprietors to bring their suits, and no express directions contrary thereto is given them in any part of the

bill. The eleventh clause, which directs them to sell from time to time, admitting of such construction as is very reconcilable to the idea held out in this; and were it otherwise, a good objection would arise from their contrariety. The Council cannot see the policy of proceeding to an immediate forfeiture, if the sale of the estates so forfeited is to be suspended for so long a time. For this cause, therefore, they object, as also because, by the above clause, powers are given to the Commissioners which no free State ever entrusted to any man or body of men whatsoever, to wit, an absolute and uncontrolled right to deprive the good subjects of this State of their possessions, to turn them and their families out of their houses, and to oblige them to contend, by course of law, for the inheritance of their ancestors, and this too, not upon a solemn trial by jury (to which the Constitution entitles them), not upon a cool and dispassionate examination of evidences, not even upon a reasonable presumption, but merely because the estates so seized, was *reputed to belong* (on the 9th of July, 1776), to the persons named in the bill, which reputation the Commissioners themselves, or any other person, may raise from malicious or interested motives.

Those who are acquainted with the nature of titles in this country, know that the best evidence of many of them is found in possession, and that should they once be ousted, they would with difficulty recover their rights. There are many dormant titles, which a wicked or ignorant Commissioner might awake, the naked right to which may exist in persons attainted by the bill, though the lands are held by honest purchasers under different titles, which may all be defeated if possession is once annexed to the mere right. There are many interfering patents, the bounds of either of which the Commissioners may be interested in extending, and were all these out of question, weighty objections would lie to the clause, from the power that it vests in the Commissioners to seize the possessions of any estate, by color of this law, for the benefit of themselves or their friends, under such rents as they shall deem proper, and to hold the same for two years, or till they are convicted by due course of law; and in the case of infants and persons beyond sea, for a much longer time. And all this without the least control, since by the law they are indemnified for

every such act of injustice; and the party evicted of his estate is not entitled to recover any damages against such Commissioners for the injury he has sustained.

The Council object to the said bill because, though it refers back the forfeitures to the ninth and sixteenth of July, yet it makes no provision for the payment of debts due to the subjects of this State from the persons attainted; pays no attention to *bona fide* purchases made of such persons who have resided among us since that day, even though prior to the treason committed, or to the due execution of contracts entered into for the sale of lands (though even where money has been paid thereon) before the 9th day of July, 1776. Because it goes even so far as to oblige the tenant who has paid his rent, and the debtor who has discharged his debt to the person attainted and convicted, or his agent residing among us, since the 9th of July, 1776 (which he was then compellable by law to do), to repay the same to the State.

5. Because no more than one month is allowed for the payment of the money for which the forfeited estates shall sell; by which many of the industrious farmers and others who have not had it in their power to accumulate money during the war, will be debarred from buying; the number of purchasers reduced; the price of the lands be diminished, and the whole confiscated property be vested in a few monopolizers and merchants in this and the neighboring States,—inconveniences which partial and easy payments might remove.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

KINGSTON, September 24, 1779. Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act for continuing the powers of the commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned,*" was before the Council, which adopted the following objection, reported by the Chancellor, viz.:

Because it appears from the preamble that the laws, by the said bill intended to be continued, are already expired by their

own limitation; and the enacting clause containing no words of revival or reënaction, the whole law becomes nugatory; as that cannot be continued which does not exist.

The Senate refused to pass the bill; consequently it did not become a law.

KINGSTON, October 15, 1779. Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to indemnify the Sheriff of the county of Ulster against involuntary escapes on civil processes, and for other purposes therein mentioned,*" was before the Council which adopted the following objections, reported by the Chancellor, viz.:

1. Because it enacts that the county treasurer shall pay out of the money to be raised on the county for that purpose all debts, &c., to which the sheriff shall be liable, if a person returned in custody on civil process shall escape, and an action be brought against the sheriff on account of such escape; and yet it renders the money payable on a condition which wholly defeats the design of the act, so far as it relates to persons escaping after the passing of the same; since the last proviso, to wit, that the sheriff return the defendants in custody, &c., and on every such return in custody shall keep the defendants in close custody, in such place as he shall be able to provide for that purpose,—being a condition precedent, the sheriff can never be entitled to a repayment by the county treasurer, since every escape is such a breach of the condition as will discharge the county.

2. Because if this proviso did not defeat the act it would open a wide door for collusion between the sheriff and the defendant; for the debt being discharged by the county treasurer, the defendant would no longer be liable to any but the sheriff, against whom, as the record will stand, the recovery by the plaintiff in the original action will appear to have been.

3. Because no mode is prescribed by the act, in which the county can recover against the defendant the money so paid on account of his escape; so that the sheriff may not only find an advantage in conniving at escapes, but even when they are

involuntary, may make a very considerable profit of them by recovering from the defendant the money due on the original debt, with costs, which the county treasurer had already discharged, without being liable to account therefor to any person whatsoever.

The Legislature refused to pass the bill; consequently it did not become a law.

KINGSTON, *October 21, 1779.* Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act to prevent horse-racing and theatrical entertainments,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the power vested in a single Justice of the Peace to determine cases to an unlimited amount upon his own knowledge, or upon the oath of a single witness, without a jury, is a direct violation of that clause of the Constitution which ordains "that trial by jury in all cases in which it hath heretofore been used in the Colony of New York, shall be established and remain inviolate forever;" and may be considered as a new court, not proceeding according to the course of the common law, which the Constitution expressly prohibits the Legislature from instituting.

2. Because, by the first enacting clause, the owner or owners of the horses employed in racing, are rendered liable to forfeit the same, though they should not have had the least previous knowledge thereof; by which means a very heavy and unjust punishment may be inflicted upon the most innocent persons whose horses may be run by their own servants contrary to their order, or by persons who may have stolen them from their pastures.

3. Because the law makes no effectual provision in case the proprietor of the horses running lives without the State or in another county, and has no goods or chattels whereon to distrain within the justice's jurisdiction; because it gives no power to seize the horse, but leaves it at the option of the owner, either to produce the same or not, so that the law instead of preventing horse-races will, in many cases, only render them more expensive to the

community, and productive of more idleness by carrying people from one county to another.

4. Because, where a horse is to be sold by virtue of this law, the justice is empowered to proceed to the sale without giving any notice thereof, so that he may, by collusion, defraud the State out of the greater part of the penalty.

5. Because the act does not ascertain the rate of fees and other charges which may accrue in the execution of the powers vested in the justice thereby, but leaves it in his discretion to retain what shall seem reasonable to him; nor can the propriety of those charges ever come in question, except the treasurer shall think it necessary to have them ascertained by an actual suit against the justice, a remedy which would be attended with too much expense and trouble to be applied except in very extraordinary cases.

6. Because the act establishes a dangerous precedent, by investing a single justice of the peace with such power over the liberty and property of the freemen of this State as should only be entrusted to the higher courts of judicature, where the party charged may have the full benefit of the law to which every subject is entitled.

The Assembly refused to pass the bill; consequently it did not become a law.

On the 1st of January, 1780, the Legislature met at Albany, consequently the next meeting of the Council was there held in the chambers of the Governor.

October 23, 1779, Richard Morris was appointed Chief Justice in place of John Jay, resigned.

ALBANY, *March 4*, 1780. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the immediate sale of part of the forfeited estates*," was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The Council objects to the said bill becoming a law of this State as inconsistent with the public good:

1. Because they conceive the forfeited estates to be sold by virtue thereof, will not be disposed of for near their value.

This objection is supported by experience in the States of New Jersey, Massachusetts Bay and Pennsylvania, in the two last of which it is said, for the like reason, the sales of forfeited lands are postponed. Few of the farmers of this State, and none of those brave men who are serving their country in the field have had it in their power, during the war, to accumulate money; they cannot therefore be purchasers, and of course all the property to be sold under this bill, must fall into the hands of a few speculators and others, in this and the neighboring States, who, taking advantage of the times, have acquired large sums of money, and they being the only purchasers of an article they know *must* be sold, will, from the principles of their profession, be cautious not to raise the price on each other. And although it is an undoubted fact that the difference between specie and Continental money is not less than thirty for one, yet there is no instance for many months past, to the knowledge of this Council, when land has been sold for more in Continental money than one-half of its real value, when compared with the depreciation, even when such sales have been made by the proprietors themselves, who, it is to be presumed, would endeavor to make the most of their own property.

2. Because the immediate sale of those lands will tend to increase the depreciation of the Continental money.

The purchasers must be possessed of large sums of Continental money, or of some merchandise that will command it. If of Continental money they realize it, and thereby not only increase the quantity in circulation, but will be no longer immediately interested to support its credit. If of merchandise, it is evident if the Continental money continues to depreciate, a loss will not only be sustained by the State in the difference of the value of money between the times of purchase and payment, but in this period it will be for the peculiar advantage of the purchasers to promote the depreciation.

3. Because the bill will not answer the purposes intended by the Legislature.

By the bill, and the act therein referred to, "not more than five hundred acres are to be sold in one parcel," and the commissioners

are, amongst other things, "in the abstract of their sales, to insert descriptions of the respective estates by them sold." In order to which the lands must be surveyed, and it is not unreasonable to suppose one month or more will be required for this business, and the other necessary preparations of the commissioners before the advertisements. A second month is allowed for advertising previous to the sale, and the third is given between the date of the certificate and the time to be fixed for payment. Thus three months at least will inevitably elapse before any money can come into the treasury by virtue of this bill, and the immediate supply of clothing and other necessities for the troops of this State, to which their services justly entitle them, and their distressed situation and the public safety so loudly call for, will be withheld from them until, it is to be feared, many of them will be impelled by necessity to quit the service. Besides, if the purchasers are possessed of articles for sale from the proceeds of which the purchase money must be raised, they may be induced, by the hope of gain for a further depreciation, to delay the payment, and put the commissioners to their suits; by which the design of this bill will be entirely defeated.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 8, 1780.* Present—Governor Clinton; Morris, Chief Justice; Yates and Hobart, Justices.

A bill entitled "*An act to facilitate the levying the taxes for supporting the poor, and defraying the contingent expenses in the counties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

Because by the said bill it is enacted, "that after the passing of the act, the Justices of the Counties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte, shall, at their General Sessions, determine the sum to be raised for the support of the poor in such of their respective towns, manors, districts and precincts as they shall judge necessary."

The power of raising money upon the people belongs to their immediate representatives, and it is inconsistent with every idea of civil liberty that any body of men should enjoy that power who do not possess this character; so true is this principle, that taxation and representation are inseparably connected, that it lies at the foundation of the late happy Revolution.

To authorize the *justices* to charge the people of these counties with *such sums as they shall judge necessary*, is leaving the property of the people at the disposition of persons who are not their immediate representatives, and whose conduct they cannot control; is departing from one of the principles which justify our revolt from British usurpation, and is inconsistent with the public good.

The Assembly refused to pass the bill; consequently it did not become a law.

POUGHKEEPSIE, *May 12, 1780.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for the more effectual suppression of vice and immorality*," was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because they conceive the wording of the preamble is not agreeable to the design of the bill, and should it pass into a law will be derogatory of the honor of the Legislature, and therefore inconsistent with the public good. The preamble recites that, "Whereas religion and good morals are the only solid foundations of liberty and happiness. And whereas profaneness and many immoral practices have of late greatly increased within this State, the more effectual measures for the encouragement of the one and the suppression of the other ought speedily to be adopted," so that referring to the next antecedents (unless we pass over a period) it would appear that profaneness was to be encouraged.

2. Because the first enacting clause prohibiting every person from following any worldly employment or labor on Sunday will impose a hardship on those who, from a religious persuasion, refrain, some other day in seven, from labor; and thus will in effect

defeat the design of the Constitution, which "doth ordain, determine and declare that the free exercise and enjoyment of religious profession and worship, without discrimination or *preference*, shall forever hereafter be allowed within this State to all mankind;" and the design of the bill might be equally effected and this objection obviated.

3. Because, in the second enacting clause, it is doubtful whether under this bill it will be an offense to be guilty of drunkenness, or profanely to curse or swear as in the bill is mentioned, unless it is done in the presence or hearing of a justice of the peace, especially as all penal statutes of this nature ought to be construed strictly and most favorable to defendants.

4. In the fourth enacting clause it is enacted that the several Courts of General or Quarter Sessions of the Peace shall have cognizance and jurisdiction of the said offenses; and the offenses being created by this bill the construction will be that the cognizance and jurisdiction of them are restricted to the Courts of Sessions only; and although the Justices of the Supreme Court and of Oyer and Terminer are directed to charge the grand jury specially to inquire of those offenses, such indictments, if found, can never come into the sessions from the courts above by any known process, and thus the offenders can never be tried, and of course escape punishment.

The Legislature refused to pass the bill; consequently it did not become a law.

POUGHKEEPSIE, October 5, 1780. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the amendment of the law directing the sales of forfeited lands,*" was before the Council, which adopted the following objections, viz.:

The Council object to its becoming a law of this State, as being inconsistent with the public good.

1. Because the fourth enacting clause of the said bill will expose the State to unnecessary expense and delay, in seeking a

discovery in Chancery of the rents due and then prosecuting in a court of common law to recover them, when the discovery and recovery might be made the business of one court.

2. Because, by the fifth enacting clause, the original contract between the State and persons who have purchased forfeited estates is materially altered, such persons being thereby subjected to a penalty created posterior to the contract; which, in the opinion of this Council, is repugnant to the first and plainest principles of justice. Besides, the forfeitures imposed by this clause may not afford a compensation to the State equal to the damages sustained and which can be recovered (under the former law) from the defaulting purchaser.

3. Because, by the seventh enacting clause, mortgagees who may have entered into possession for default of payment of their principal and interest, and in whom the estate by law is vested, may, under this clause, be turned out of possession, subject to costs in the first instance, and put to their suit against the Commissioners, which suit, by the last enacting clause, is to be defended at the public expense.

The Legislature refused to pass the bill; consequently it did not become a law.

POUGHKEEPSIE, *October 9, 1780.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the appointment of a Council to assist in the administration of the government during the recess of the Legislature,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

The Council object to the said bill becoming a law of this State, as being inconsistent with the spirit of the Constitution and the public good.

1. Because, to take the several measures in this bill directed to be taken, the person administering the government, with the Council therein provided, must exercise the powers of legislation; which by the Constitution is vested in the Senate and Assembly, and cannot by them be delegated to others.

2. Because the person administering the government is by this bill subjected in the execution of his office to the control of a Council, when by the Constitution it is expressly ordained, determined and declared that the supreme executive power and authority of this State shall be vested in a Governor.

3. Because the said bill is not only repugnant to the spirit and letter of the Constitution, but should the same become a law would, in the opinion of this Council, tend to embarrass government and destroy its present energy.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *March 8, 1781.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice.

A bill entitled "*An act more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on exportation of flour, meal and wheat, out of the State,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because, without any apparent necessity, it imposes an embargo on wheat, meal and flour, the sole object of the embargo being declared to be, the enabling the State agent to collect a deficiency which must at this time (if the credits mentioned in the said bill are given) be extremely small, if any, and yet the embargo may continue a long time after the whole quantity is collected for want of timely returns being made, whereby the course of commerce will be stopped; the price of our staple commodities lessened, to the injury of individuals and the discouragement of agriculture; the State, already groaning under heavy burdens, impoverished, and probably embroiled with their neighbors, who, by laying similar embargoes in return, may retain a very considerable balance due to the subjects of this State for flour already exported; the fair trader be discouraged, and commerce put into the hands of those who elude the laws; individuals who have made contracts with the neighboring States on the suspension

of the late embargo law be ruined, and all confidence in government destroyed. And this without necessity; the penalties in the bill being amply sufficient to procure the deficiencies, if any there be, without this general shock to the trade of the State.

2. Because the law makes no provision for allowing an exportation even if the necessity of our army, or the fleets and armies of our ally should render it necessary to export for their use; for though exporting without license is rendered penal, yet no power is given to grant such licenses, the law empowering the Governor with two members of the Legislature to grant licenses being revived only so far as relates to the penalties therein expressed.

3. Because the general warrant of impress which the Governor is desired to issue puts the whole of the wheat and flour of the State in the hands of the agents, who are only to be restrained by a mere instruction (which does not appear in the warrant) from executing it agreeable to the tenor of the law, and subject to no penalty for disregarding the instruction.

4. Because, though the embargo is not to take place till six days after the passing of the said act, yet warrants are to issue, as is said, "in order to render the embargo more effectual," immediately, to be executed before the embargo takes place, or a reasonable notice of laying the same be given, by which means the innocent proprietor of wheat and flour, seized by virtue of such warrant, and before he could know of the law, is compelled to receive what is called the usual certificate, that is, a certificate only receivable in taxes, at the rate of forty dollars for one, of the bills of credit issued in consequence of the act of Congress of the eighteenth of March last, although by a late law of the State, every dollar of such emission, in consequence of the said act, is declared to be equal in value to seventy-five dollars; thus depriving him of near one-half of the value of such wheat and flour, besides obliging him to receive certificates that can be of no immediate use to him.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 26, 1781.* Present — Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to relieve certain persons in the county of Charlotte from the penalty of an act entitled 'An act for raising levies to reinforce the armies of the United States,'*" was before the Council, which adopted the following objections, viz.:

1. Because the commutation thereby offered to the delinquent classes in the regiment of militia, in the county of Charlotte, in discharge of the penalties by them incurred, is partial and not calculated for the public good.

2. Because no reasons are adduced in the said bill for such partial indulgence, and it will therefore afford to other delinquent classes an equal claim to the same exemption.

3. Because the said bill, by exempting those classes from paying a double bounty, impliedly pardons the officers, whom it would otherwise affect, from the penalties and punishment incurred by them in neglecting to have those classes doubly assessed; thereby giving encouragement to others, to be guilty of similar offenses, to the great injury of the public service.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 27, 1781.* Present — Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to suspend certain parts of an act entitled 'An act for raising by tax a sum equal to one hundred and fifty thousand dollars in specie,'*" and of an act entitled "*An act approving of the act of Congress of the 18th day of March, 1780, relative to the finances of the United States, and making provision for redeeming the proportion of this State of the bills of credit to be emitted in pursuance of the said act of Congress, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

Because the resolution of Congress of the twenty-sixth of August last, upon which the said bill is predicated, directs only that the value of the *sums due* to the creditors of the United States

shall be ascertained according to the current value of *Continental bills of credit* compared with *specie* at the time the money became due at the place where the supplies were furnished; whereas this bill, in the second enacting clause thereof, authorizes the person administering the government, together with any five members of the Legislature, not only to devise any mode or plan for ascertaining the value of the sums due to the creditors of the United States within this State, agreeable to the direction of the said resolution, but further authorizes the person administering the government, with any five members of the Legislature, to ascertain the prices to be allowed to such creditors upon the settlement of their respective accounts, *which*, not being directed by the said resolution, will not be binding upon Congress, cannot be received as a rule of conduct by their servants in adjusting the public accounts within this State, and will therefore defeat the business which it is intended to effect. Besides, the vesting a power in the person administering the government, and any five members of the Legislature, or in any persons whatsoever to destroy the original contracts between the subjects of this State and the public officers by arbitrarily fixing new prices for the articles furnished, gives this bill the insidious operation of an *ex post facto* law, opens a door destructive to property and public confidence, and is in the opinion of this Council, highly injurious to the rights of the people and against the public good.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 29, 1781.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to amend an act entitled 'An act for regulating the militia of the State of New York,'*" was before the Council, which adopted the following objections, viz.:

1. For that by the third section, all persons neglecting or refusing to march after due notice, are to be tried by a Court Martial, to be convened by the commanding officer of a regiment composed

of such members as he shall nominate and appoint, who are authorized to impose any fine, or inflict any corporal punishment not extending to life or limb, at their discretion, whereby the citizens of this State are subject to fines and ignominious punishments by the sentence of a court not even composed by detail according to ordinary military usage, but by the arbitrary will and nomination of a commanding officer of a regiment, and are thus deprived of that security against partiality, private pique and resentment, wisely provided against by the act for regulating the militia of this State, passed the 11th day of March, 1780, making those offenses cognizable only by a general Court Martial, in which case the sentences of the court are subject to the control of the person administering the government.

2. Because the fines which may be imposed by such regimental court are to be distributed amongst such of the non-commissioned officers and privates as shall have done their duty, thereby giving an unequal and unjust recompense; as those regiments who, in greatest numbers and prompt alacrity, obey the calls of their country, will be least benefited, whilst those of other regiments will, by this distribution, be rewarded beyond proportion or their merits, and thus it will become the interest of some to encourage others to persist in their neglect of duty.

3. Because, although the State in time of danger is entitled to the personal service of the subjects for its defense, yet this service ought to be exacted in such manner as to operate as nearly equal as possible; whereas, by the present bill, the most extensive and most populous districts may contribute the least, as the fines for neglect of duty are not to be applied for the benefit of the community at large, but distributed among the individuals of such districts, which is no more than a mere change of property from one individual to another, and by collusion may even lose the effect of a punishment.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, March 29, 1781. Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to prevent evil-minded persons supplying the enemy with provisions, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

1. For that although, by the second enacting clause of the said bill, a power is given to a grand jury of the county of Dutchess to inquire into and present any offenses under the said bill heretofore committed or hereafter to be committed in the county of Westchester, and also a power to a grand jury of the county of Albany in like manner to inquire into and present any offenses under the said bill, heretofore committed or hereafter to be committed, in either the counties of Tryon or Charlotte, and directs that the petit jurors, for the trials of all such indictments shall be returned from *the city* and county where the indictment shall be taken, yet by the law there is no express power vested in the courts in which the indictments are to be found to try the offenders, by which means the law is imperfect, and will not answer the designs of the Legislature.

2. For that the third and last enacting clause of the said bill only giving a right to seize in case of the goods; wares and merchandises coming immediately from any part of this State within the power of the enemy, will not answer the designs of the Legislature, it being an undoubted fact that the trade intended to be prevented by the said bill is carried on from this State; through the States of Connecticut and New Jersey, against which trade the bill makes no provision.

3. For that by the same clause, any person or persons seizing goods as coming from the enemy, is justified in immediately converting such goods to his or their own use, and should a seizure be made of any considerable property, not subject to seizure by any person or persons not of sufficient ability to answer in damages, the innocent proprietor is unjustly deprived of his property and is without remedy.

The Senate refused to pass the bill; consequently it did not become a law.

POUGHKEEPSIE, *June 30, 1781.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for raising a tax in specie and a tax in paper currency,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because it does not correct the inequalities in the distribution of the tax for raising \$2,500,000, referred to in the said bill, among the several towns, manors, precincts and districts, but makes the apportionment of that tax the rule for the adjusting the proportions which the several districts shall raise of the future tax, without affording such district as may have been aggrieved any means of redress.

2. Because, under the present mode of taxation, no remedy remains to the people against an unjust and unequal distribution of the county quota among the several districts, but removing the supervisors who may have made the same of this; the bill under consideration deprives them, by rendering an apportionment made previous to the last election of supervisors the rule by which a subsequent tax is to be collected.

Notwithstanding the objections, the Legislature passed the bill into a law.

POUGHKEEPSIE, *April 10, 1782.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to empower justices of the peace, mayors, recorders and aldermen to try causes to the value of ten pounds and under, and to repeal certain acts therein mentioned,*" was before the Council, which adopted the following objections, viz.:

1. Because it subjects property of too great an amount to be determined by vague and informal courts, which experience evinces often proceed upon mistaken principles of justice, to which the injured must submit, or risk the incurring of greater expenses by seeking redress in the Supreme Court, and where relief can only be given in peculiar cases.

2. Because it will tend to a spirit of litigation, and as these courts may be and generally are held in taverns, they lead the

inhabitants to attend them into dangerous excesses introductive of a contempt of the laws, and a profligacy of manners.

3. Because a great waste of time must be occasioned by the execution of the law when a court may be held for the trial of each cause.

The Council further object to the said bill, particularly:

1. For that by the third section, either of the parties or their attorneys may demand a jury, although no issue is joined, by which means a jury may be summoned at the request of the plaintiff, for the purpose of increasing the costs in cases where the defendant may make no defense.

2. For that by the fourth section, the court is authorized and required (unless a reasonable cause be shown, or be proved to its satisfaction) to set a fine on every person who shall make default in attending as a juror or witness; and to issue a warrant for levying the same; thus a defaulting juror or witness is subjected to the payment of such fine or imprisonment, without the benefit of an essoin, day (by law given in all superior courts) to assign his reasons for his non-attendance by proof.

3. For that, by the last section, an oath of allegiance and abjuration is required to be taken as an indispensable preliminary to entitle any of the subjects of this State to the right of bringing suit, for the recovery at law or in equity of their just demands. Governments, from reasons of policy, may at times require from their subjects a general test, but where this is required from those only who are compelled to have recourse to the courts for the recovery of their just demands under the alluring temptation of interest, it can never afford to such a government the security originally intended thereby. And although the provisionary clause dispenses therewith in favor of the inhabitants of Westchester county, and the subjects of neighboring States, it leaves the subjects of our faithful allies, and alien friends who, under the sanction of our laws or national treaties, have a temporary residence in this State, without the remedy of recovering their legal rights.

Notwithstanding the objections, the Legislature passed the bill into a law.

POUGHKEEPSIE, April 11, 1782. Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for raising the sum of £18,000, and the further sum of £18,000, by tax, within this State, and for settling public accounts,*" being under consideration, the Council, sensible of the propriety of raising money for the public exigencies, regret the necessity to which they are reduced of objecting to this bill as inconsistent with the spirit of the Constitution, and against the public good, and more especially as the exceptional clauses in the said bill appear unconnected with its general design.

The Council object to the said bill:

1. Because, by the fifth and ninth sections, the commissioner to be appointed for the purpose of adjusting and settling the public accounts of the inhabitants is to be guided and directed by the instructions which shall be communicated by the Legislature or by the persons named in the bill, or hereafter to be appointed. This clause gives to instructions joint force and operation with the law whereon they are founded, and may in effect direct a mode of settlement and establish a precedent against the spirit of the Constitution; and because the Auditor of the State, who is to liquidate the accounts of individuals against the public, being also subject to such instructions, his responsibility for his conduct is totally destroyed, and the property of the subject left without the security of law.

2. Because, by the sixth and seventh sections, the said commissioner, after such settlement, is to receive from the claimant all his vouchers and accounts, and to give him certificates for the amount of his demand, with interest, made payable by the treasurer of this State; thereby subjecting this State in the first instance to the payment of the public debts due to its inhabitants: and as this mode of settlement is unauthorized by an act of Congress, the State can have no solid security for repayment or being credited therewith in their general account.

3. Because should the said bill become a law, such claimants are not obliged to relinquish their vouchers against the United States and accept the security of this State, and should they prefer the former to the latter the law will be nugatory and a heavy expense incurred without any advantage to the public.

Notwithstanding the objections, the Legislature passed the bill into a law.

POUGHKEEPSIE, *April 13, 1782.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to stay suits against public officers for a limited time,*" was before the Council, which adopted the following objections, viz.:

This Council, without seeing the necessity of a declaratory clause in the said bill, that officers and servants of this or the United States are liable to pay the debts by them contracted on behalf of the public, convinced should the question at any time be raised, the courts of justice can decide it upon the laws already extant, object against the enacting clause in the said bill as inconsistent with the public good.

Because the suspension of one of the most essential rights of the subjects, that of appealing to the courts of justice for the recovery of a just demand, is an exercise of legislative power which may be drawn into a dangerous precedent, and tend to destroy the confidence of the people and afford the subject, upon the same grounds, a pretext for a denial of paying the public taxes or debts due to each other.

The Senate refused to pass the bill; consequently it did not become a law.

KINGSTON, *March 20, 1783.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for the relief of certain insolvent debtors with respect to the imprisonment of their persons,*" was before the Council, which adopted the following objections, viz.:

1. For that the relief intended to be given to the debtors named in the said bill against their creditors, is by its preamble, grounded upon a general representation of their necessitous cir-

cumstances; a reason which will equally apply to all confined debtors in this State, and therefore the bill on those principles ought to be general and not particular.

2. For that, by the constitutional proceedings of the Legislature, founded upon the truest principles of justice and equity, no private bill ought to pass, unless the persons affected thereby have an opportunity of being heard. And this being a private bill, it does not appear that the debtors, previous to their application to the Legislature, had given notice to their respective creditors; and thus the creditors, who are materially affected in their property, should the said bill become a law, are deprived of the only opportunity to assign reasons against the passing thereof.

The Legislature refused to pass the bill; consequently it did not become a law.

KINGSTON, *March 24, 1783.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to remove certain doubts relative to the powers of the Commissioners of Sequestration,*" was before the Council, which adopted the following objections, viz.:

The Council object against the said bill becoming a law of this State as inconsistent with the public good.

1. To the third enacting clause; for that the suit thereby given to the commissioners appears to be an action of detinue; and, without express words in the bill, the fine therein directed to be set and inflicted by the court cannot be made part of the judgment in such suit, and cannot be levied on an execution issued in consequence thereof.

That the proceedings upon the said bill have their origin in the same, and can only be pursued agreeable to directions thereof; and no mode being prescribed by the said bill for levying and recovering the fine thereby directed to be set and inflicted, the same can never come to the hands of the plaintiff, in order to its being paid into the treasury of this State: whereby the bill, should it become a law, would in this respect be nugatory.

2. To the last enacting clause: 1st. For that, the words *upon the penalty of being guilty of a misdemeanor against the people of this State*, are altogether useless, and the phraseology improper; 2d. For that although, by the said clause, persons who will swear before a judge that they came possessed of such bonds, specialties or notes of hand as are in the bill specified, in the manner and for the consideration therein designated, may bring suits for the recovery of the moneys due thereon; yet persons who have already brought suits on such bonds, &c., though they should take the oath by the said clause prescribed, cannot continue their suits, or proceed to judgments; the nisi in the said clause extending only to suits intended to be commenced, and thus, in instances exactly similar, the rights of some individuals would be destroyed by a partial provision in favor of others.

The Senate refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *January 15, 1784.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act declaratory of the alienism of the persons therein described,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because it tends to establish a principle which is contradictory to the fundamental laws of every civilized nation, to wit, that the subjects of the State can, by their adherence to its enemies, renounce their allegiance and become aliens.

If this principle should be established, it must follow that the confiscation bill, and every other law which punishes persons who have adhered to the enemy as felons or traitors, must be void or manifestly unjust; since aliens, enemies owing no allegiance and enjoying no protection, cannot be amenable to the laws.

2. Because, if this doctrine once has the sanction of the law, any subject of the State, who shall not hold lands within the same, may cast off his allegiance and commit treason with impunity,

provided he lives not within its jurisdiction; since, as an alien, he cannot be corporally punished.

3. Because the forfeitures refer back to the time of the Declaration of Independence by this State, when many of the persons who are the objects of this bill lived within the jurisdiction of the State, unattainted and unsuspected of treason and alienism, and might, for *bona fide* considerations, have sold their property to the good citizens of the State, who would, if this act should pass into a law, be unjustly deprived thereof.

4. Because, in the opinion of this Council, the doctrine established in the act may induce Great Britain to adopt similar principles, and many of the subjects of this State and the United States, holding property in the British dominions, would, in all probability, be deprived thereof if this act should pass into a law.

5. Because it is impossible to understand what is intended by that part of the proviso that excepts such persons from the penalties of the bill as have become subjects since the ninth day of July, one thousand seven hundred and seventy-six. No provision having yet been made for naturalizing aliens within this State, it must either be nugatory or it must be intended to include all persons who have submitted to the laws and jurisdiction of this State at any time before the passing of this bill, in which latter case any person now residing within any part of the State, and submitting to the government thereof, is within the proviso, and the law is thereby rendered useless, except so far as it may be supposed to operate against such persons as have left the State, in which limited sense it appears from the terms of the act it was not intended to be understood.

6. Because it contradicts both the spirit and the letter of the provisional treaty with Great Britain.

7. That this State, not being at present engaged in war, can have no alien enemies; and as, by the law of nations, alien friends may possess property, an act forfeiting such property amounts to a declaration of war against their sovereign.

The Senate refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *January* 15, 1784. Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to amend an act relative to debts due to persons within the enemy's lines,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because, by rendering State securities payable for debts due to persons who are placed in such a situation as to be supposed unfriendly to the government, a distinction is held up between current money and State securities, which is highly dishonorable to the State and destructive of its credit.

2. Because, if the securities and bills of credit mentioned in the act, are equal in value to money, no law is necessary to render them receivable for debts, and the coercion used for that purpose tends to discredit them. If they are not equal, the rendering them receivable is a fruitless attempt to supply by force the want of credit, and must in the end be destructive of all confidence in the faith of government.

3. Because, if the securities tendered are less valuable than money, the persons compelled to receive them are so far punished by the State, and this without any trial or designation of the offense, other than that of having remained within or near the enemy's lines, which many citizens may and have been constrained to do.

4. Because it militates against that article of the treaty with Great Britain which stipulates for the just payment of debts on either side, since it is not in its operation confined to such persons as are, both plaintiff and defendant, subjects of this State.

5. Because, by the second section, the essential right of trials by jury, secured by the Constitution to the citizens of this State in all cases where it has been used, may be effectually evaded in the cases there enumerated, by compelling a plaintiff to submit his cause to the determination of referees.

For that the special matters which defendants are authorized by this bill to plead before such referees, may in point of form or substance be defectively set forth, and the referees, for want of judicial powers in law to determine on its validity, would deprive the plaintiff of the right of demurring.

6. For that the powers given to such referees to determine the plaintiff's demand upon principles of equity and good conscience is a virtual establishment of a new Court of Chancery, in violation of the Constitution, which declares that no new court can be instituted but such as shall proceed according to the course of the common law.

7. Because, in the enacting clause, it is expressly provided, "That nothing in the said act contained shall be construed to extend to any person that heretofore hath been, now is, or hereafter shall be a prisoner with the enemy," whereby all those who have, by their exertions in the common cause, unfortunately come under the above description are absolutely excluded the advantage intended to be secured to their fellow-citizens by the said bill.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *March 30, 1784.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice.

A bill entitled "*An act for apprehending of persons in any county upon warrants granted by the justices of the peace of any other county,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the extent given by the act to the warrant of a justice, is liable to great abuses and enables a malicious accuser or an ill-informed magistrate to drag an innocent person from one end of the State to the other, without any remedy in case the charge should appear to be ill-founded.

2. Because no proof being required that the person against whom such warrant may issue usually resided in the county in which the crime was said to have been committed, or that he left his home with a view to escape from justice, no check is imposed upon the frauds, violences and vexations that law may subject those to who may be arrested under it when at a distance from home, where they are unknown and friendless and incapable of procuring bail.

3. Because it deprives the subject of bail in many cases in which he would be entitled thereto; for the act directs that persons who may be apprehended shall be bailed in case the offense is of such a nature as to be bailable, yet this provision will appear ineffectual when it is considered that the admission to bail does not only depend upon the nature of the crime, but on the degree of evidence by which the charge is supported: of this, the justice who indorses the warrant must be entirely ignorant. However slight, therefore, the evidence may be, if the charge is of such a nature as when well supported to justify a commitment, the person accused, even upon the lightest suspicion, may be led like a criminal from one end of the State to the other, and alike injured in his fortune, his freedom, and his reputation.

4. Because the provisions in the act are extremely expensive. If the justice takes bail, the constable must carry the recognizance, &c., to the clerk of the county in which the offense is charged to have been committed; this, if the counties are remote, must be attended with considerable expense. If no bail is taken, the offender must be transported; in doing this more than one person must be employed, and in many cases the transportation of a person perhaps only suspected of a crime may amount to a very considerable sum.

5. Because the act makes no provision for the payment of this expense, nor declares whether it is to be defrayed by the State at large, by the county in which the supposed offender is found, or by that in which the crime is charged to have been committed.

6. Because, as the law now stands, most of the evils now intended to be cured by this act are guarded against by the power vested in the Justices of the Supreme Court and the Justices in their sessions to issue bench warrants. Their knowledge of the law enables them to distinguish the cases in which it may be proper to grant them; while their powers to admit to bail are much greater than those of a single justice of the peace.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, April 20, 1784. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to enable the Mayor, Recorder and Aldermen of the city and county of New York to raise moneys by tax for the purposes therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the Council conceive that life, personal liberty and property are the blessings which governments were framed to preserve and protect; that the two first are in little danger under the most despotic rulers, while the last, which holds out a continued temptation to the rapacity of governors, is only secured, even in free states, by the most vigilant attention; that our happy Constitution has not been unmindful of proper guards for the security of this essential right. If the Legislature frame the laws under which the taxes are levied, if the assessors apportion them according to known and stated rules, being in this mere executive officers, they may be punished by the judicial for a violation of their duty; and thus the legislative, executive and judicial being kept distinct, each serves to check the other, and protect the property of the citizen. That the bill under consideration removes all these checks, when it directs that the sums to be raised "be rated and assessed by the vestrymen according to the estates and other circumstances and abilities to pay taxes, of each respective person, collectively considered; "that property being the measure of taxation, to depart from this rule and to substitute an imaginary one, which only exists in the opinion of the assessors, is at once to vest him with legislative and executive powers, and to take off the control of the judicial; since where no law is, there can be no transgression. If the assessors are of the richer class of citizens, they will overburden the poor; if chosen from among the poor, they will endeavor to oppress the rich. Thus the first effect of this mode of taxation will be parties and dissensions among the different classes of citizens, whom mutual interest and the policy of government should bind together. Party spirit will make this law the engine of oppression, and the avarice and resentment of those who prevail at elections becoming the law of the land, may be as fatal to free citizens as the rapacity of the most despotic tyrant. That these objections have peculiar weight when applied to a com-

mercial city, where selfish views may stimulate assessors to oppress their rivals in trade, and destroy that security which makes the basis of commerce.

That though pressing emergencies and public dangers may, in some circumstances, have palliated this mode of taxation, nothing can justify it in a time of profound peace, when regular systems should be adopted; more especially when the objects for which the tax is to be collected are not of sufficient magnitude to excuse the introduction of such an uncontrolled power as this vests in the vestrymen.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *May 4, 1784.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for raising £100,000 within the several counties therein mentioned,*" was before the Council, which adopted the following objections, viz.:

Because the Council conceive that life, personal liberty and property are the blessings which governments were framed to preserve and protect; that the two first are in little danger under the most despotic rulers, while the last, which holds out a continued temptation to the rapacity of governors, is only secured, even in free states, by the most vigilant attention, that our happy Constitution has not been unmindful of proper guards for the security of this essential right. If the Legislature frame the laws under which the taxes are levied, if the assessors apportion them according to known and stated rules, being in this mere executive officers, they may be punished by the judicial for a violation of their duty; and thus the legislative, executive and judicial being kept distinct, each serves to check the other, and protect the property of the citizen.

That the bill under consideration removes all these checks, when it directs that the sums to be raised be rated and assessed according to the estates and other circumstances and abilities to

pay taxes of each respective person, collectively considered; that property being the measure of taxation, to depart from this rule and to substitute an imaginary one which only exists in the opinion of the assessors, is at once to vest him with legislative and executive powers, and to take off the control of the judicial; since where no law is, there can be no offense. If the assessors are of the richer class of citizens, they will overburden the poor; if chosen from among the poor, they will endeavor to oppress the rich. Thus the first effect of this mode of taxation will be parties among the different classes of citizens, whom mutual interest and the policy of government should bind together. Party spirit will make this law the engine of oppression, and the avarice and resentment of those who prevail at elections, becoming the law of the land, may be as fatal to free citizens as the rapacity of the most despotic tyrant.

That though pressing emergencies and public dangers may, in some circumstances, have palliated this mode of taxation, nothing can justify it in a time of profound peace, when regular systems should be adopted.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *May* 10, 1784. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to encourage the settlement of the waste and unappropriated lands within this State,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

The Council object to that part of the fifth enacting clause of the bill by which certificates, issued by the Continental loan officer in this State, for moneys lent to the United States, by the inhabitants of this State, reduced to their value in specie by the Continental scale of depreciation, are made receivable by this State, for the said waste and unappropriated lands.

1. Because the said certificates are the proper debt of the United States, and not of this State only; and it is inconsistent

with the public good and public faith that the Legislature should by law barter away the public property of this State, for the payment of the debts of the United States, until the debts of this State are fully and perfectly discharged.

2. Because receiving such certificates as aforesaid may interfere with the arrangement of the United States for discharging the public debts.

3. Because the receiving the said certificates will open a door to fresh frauds, and give a certain disguise and covering to past ones which will render their detection altogether impossible, until the accounts of the respective States with the United States are settled; and though the Legislature may entertain the highest opinion of the uprightness of the public servants of Congress, they can never be justified by their constituents in passing laws that hold up to such servants the highest temptations, to depart from their integrity, and give them the security that such frauds, if ever discovered, will be when their representatives only can answer for it.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *May 12, 1784.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to preserve the freedom and independence of this State, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

Because, by the first enacting clause, the voluntarily remaining with the fleets and armies of the King of Great Britain is made an offense highly penal, whereas, by the known laws of all nations, persons who remain with their possessions when the country is overrun by a conquering army, are at least excused, if not justified; and should our laws be made to retrospect in a manner so directly contrary to the received opinions of all civilized nations and even the known principles of common justice, it will be highly derogatory to the honor of the State, and fill the minds of our fellow-citizens with the apprehension of suffering, in future, some heavy

punishment for that conduct which at present is perfectly innocent. Besides, was this bill free from the objections which lie against all retrospective and *ex post facto* laws, the inconveniences which must unavoidably follow, should it become a law of this State, are fully sufficient to show that it is totally inconsistent with the public good; for so large a proportion of the citizens remained in the parts of the southern district which were possessed by the British armies, that in most places it would be difficult, and in many absolutely impossible, to find men to fill the necessary offices, even for conducting elections, until a new set of inhabitants could be procured.

2. Because the persons within the several descriptions of offenses enumerated in the first enacting clause cannot be adjudged guilty of misprison of treason but on conviction, and such conviction cannot be had but on a prosecution to be commenced, in the course of which it will be necessary to show that the defendant comes within one or other of the descriptions in the said clause; this must be a prosecution by reason of the part the defendant may have taken during the war, directly in the face of the sixth article of the definitive treaty, by which it is stipulated "that no future prosecution shall be commenced against any person or persons for or by reason of the part which he or they may have taken in the war, and that no person shall on that account suffer any future loss or damage either in his person, liberty or property."

Because, by the said enacting clause of the said bill, the inspectors and superintendents of the election are constituted a court, they being by the said bill expressly authorized to inquire into and determine the several matters in the first enacting clause, and their judgment is conclusive to disfranchise; this is constituting a new court, which does not proceed according to the course of the common law, and is expressly against the forty-first section of the Constitution.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *May* 12, 1784. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the speedy sale of the confiscated and forfeited estates within this State, and for other purposes therein mentioned,*" was before the Council, which reported the following objections to the said bill, viz.:

1. Because the reasons set forth in their objections against the bill entitled "*An act to encourage the settlement of the waste and unappropriated lands within this State,*" delivered to the Honorable the Assembly the tenth instant, and to which the Council refer, apply with equal force against the present bill.

2. Because, by the said bill, the commissioners for the sale of the said lands give no security for the great property that must come into their hands, and in case of their or any of their misconduct the State will be without a remedy.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *November* 25, 1784. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to empower Elizabeth Debeavois, widow, and Johannes E. Lott and John Vanderbilt, esquire, administrators to the estate of Joost Debeavois, deceased, to sell and dispose of the real estate of the said Joost Debeavois, for the payment of his debts and other purposes,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

Because, by the said bill, "all and singular the lands, tenements and hereditaments whereof the said Joost Debeavois died seized, are vested in the said administrators, their heirs and assigns," without reservation, whereby the widow of the said Joost Debeavois would be deprived of her right of dower; and

Because the surplus money arising from the sale "of the said lands, tenements, hereditaments and real estate," after the payment of "the debts which were due from the said Joost Debeavois, the intestate, at the time of his decease," is to be put at

interest, by the administrators, "for the use and benefit of the wife and children of the said Joost," without requiring any security from the said administrators, for the faithful discharge of the additional trust intended by this bill to be reposed in them.

The Senate refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *November 27, 1784.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice.

A bill entitled "*An act for the more easy assessment of taxes in the city and county of New York, altering the mode of punishment in certain cases of petit larceny, and for the confinement of vagrants and lewd persons to hard labor,*" was before the Council, which reported the following objections, viz.:

Because, by the said bill, a power is given to the Mayor, Recorder and Aldermen to confine and set to hard labor "all and every lewd person or persons leading debauched lives who now are, or from time to time shall come into or sojourn, within the jurisdiction of the city and county of New York," without defining what is intended by leading debauched lives, thereby putting it in the power of the said Mayor, Recorder and Aldermen to punish and imprison any person or persons residing within the said jurisdiction without trial or conviction, or without his or their having committed any offense against the known laws of the land; thus depriving, as well citizens as sojourners entitled to protection, of the benefit of a trial by jury, secured to them by the Constitution, and of the *habeas corpus* law, the best and most effectual check on the despotism of magistrates; and

Because the other parts of the bill had before invested the Mayor, Recorder and Aldermen with full and ample powers for the punishment (on conviction) of any offender against the laws of the State, and even of extending that punishment to idle and disorderly vagrants not having visible means of a livelihood; beyond which a regard to the liberty of the subject should not, in any case, extend the discretionary power of the magistrate.

The Senate refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *March 1, 1785.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to regulate inoculation for the small pox in the city and county of Albany, and in the counties of Suffolk and Dutchess,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

The Council object against the said bill becoming a law of this State, as inconsistent with the public good, because the general tendency of the bill is to put an end to the practice of inoculation for the small pox in the counties therein mentioned.

For, by the first enacting clause, all persons are restrained from making use of any building within the city of Albany for the purpose, unless a license from the Mayor, Aldermen and Commonalty, in Common Council convened, be previously obtained, which leaves it in the power of the corporation nearly if not totally to stop the practice; for though, by the proviso at the conclusion of this clause, people are not to be prevented from inoculating their own families in their own houses, yet it will admit of a doubt whether a physician may be employed for the purpose except in his own house.

And, by the second enacting clause, no person in the remaining parts of the county of Albany, or in the counties of Suffolk and Dutchess, is to inoculate or cause any person to be inoculated for the small pox, but at such place or places and under such rules and regulations to prevent the spreading of the disease, as a majority of the justices of the peace and supervisors of the several towns, precincts and districts within the said counties shall, respectively, under their hands and seals, make and direct; whereby it may so happen that should a majority of the justices and the supervisors of any town, precinct or district be opposed to the practice of inoculating, from scruples of conscience or apprehensions of danger, no place would be fixed, nor no regulations made, and thus one of the most useful discoveries with which Providence

hath favored mankind for moderating the violence and danger of a contagious and fatal disease, would be rendered in a great measure nugatory and useless: for though recourse may be had to inoculation when the small pox breaks out in the natural way, yet it is observed to prove more fatal on such occasions, owing to the air being rendered unwholesome from the great number of persons infected with the disorder, to an unsuitable habit of body in many patients who are at all events obliged to be inoculated, and sometimes to its happening at an unfavorable season of the year; whereas, if the present practice of inoculating as it suits with the circumstances and conveniences of the people be suffered to continue, few evil consequences are to be apprehended, and that otherwise terrible disease is rendered so mild in most cases as to be scarcely infectious.

A recent instance in one of the adjoining towns of a neighboring State abundantly evinces the justice of these objections.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

CITY OF NEW YORK, *March 3, 1785.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to enable the courts therein mentioned to issue commissions for the examination of witnesses in certain cases,*" was before the Council, which adopted the following objections, reported by the Chancellor in behalf of Chief Justice Morris, viz.:

1. Because, by rendering a remedy which should never be used but in extraordinary cases, too common, it may in the end habituate the courts and people to a mode of trial by affidavits, which is much less perfect than that now, in use in which the witness being brought before the judge and jury, they form their judgment not only from what is said by him, but from his conduct and manner of saying it.
2. Because the judge and jurors, as well as the parties, have, by the common law, a right to interrogate the witness, of which advantage this bill would deprive them.

3. Because, as the whole of the depositions must be read, they will bring many matters before the jurors which are altogether impertinent to the issue, and which in common cases the court would deem improper testimony to go to the jury, and thus create a bias on the minds of the jurors and lead them to an illegal decision.

4. Because, though in causes depending in Chancery where the whole merits appear in the bill and answers, the parties may so frame their interrogatories as to bring out the truth, this would be utterly impossible, in many cases, at common law, where the general issue is pleaded and the special matters given in evidence; so that the parties, not seeing each other's interrogatories, nor not knowing what each intended to prove, might be questioning to different points, and this bill rendered the parent of great injustice, and that proviso which leaves a discretionary power in the judge or court to grant or refuse a commission, be rendered nugatory, from his not being able to determine what the suit in issue may be.

5. Because, unless more care is used in the naming of the commissioners and in the carriage of the commission than is to be expected from every judge of every inferior court, great latitude will be given for fraud and forgery.

6. Because the expense of a commission in which at least two commissioners must be employed together with that of interrogatories, cross-interrogatories, depositions, copies, &c., must, in many cases tried in the inferior courts, exceed the value of the thing in demand; and this too may be rendered a dead charge to the person applying for the commission, if his opponent refuses to join therein.

7. Because it is totally unnecessary. The experience of ages in England and of a hundred years here, having set this seal to the present practice, it is impossible to foresee all the inconveniences and mischiefs that so essential an alteration in the common law as the one proposed might produce.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *March 8, 1785.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act incorporating the several tradesmen and mechanics of the city and county of New York,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because, so far as charity is the object of the bill, it is totally unnecessary, many charitable societies subsisting as well in this city as elsewhere without incorporation; nor can anything justify such incorporation but some peculiarity in the situation of the persons applying, which render the ordinary provision for other distressed citizens inadequate to their relief.

2. Because the contributions necessary to support the charity, the loss of time in the various meetings of the corporation making by-laws, in directing the funds, and managing the alms-house, &c., must all operate as so many taxes on the members, and either induce them to use means to keep up the price of labor, or find themselves underwrought by other mechanics who are willing to rely on the State for the support to which, in case of distress, they are by law entitled, without involving themselves in present difficulties to avoid distant evils.

3. Because all incorporations imply a privilege given to one order of citizens which others do not enjoy, and are so far destructive of that principle of equal liberty which should subsist in every community; and though respect for ancient rights may have induced the framers of the Constitution to tolerate those that then existed, nothing but the most evident public utility can justify a further extension of them.

4. Because, by the sixth enacting clause, the by-laws of the corporation are made to depend in some measure upon the will of the mayor, aldermen and commonalty of the city and county of New York. A connection and union of views being thereby rendered necessary, either the mechanics will influence the magistrates, and the extensive powers of the corporation of the city and county of New York be made at some future day instruments of monopoly and oppression; or, which is more probable, the corporation of the city and county of New York will obtain a

controlling power over the corporation of mechanics, and thus add to the extensive influence which that rich and powerful corporation already enjoy, thereby rendering it extremely dangerous to the citizens and to the political freedom of the people: an evil much more to be apprehended under the present than under the former Constitution, for the Governor and Senators being now elected either by the State at large, or extensive districts in which there will on many occasions be a variety of sentiments, it must be obvious that a comparatively small body of citizens uniting in one general object may, by their weight, make the lightest scale preponderate.

5. Because the reason assigned in the preamble of this bill may equally operate for the incorporation not only of the mechanics, but of every other order of men in every county, whereby the State, instead of being a community of free citizens pursuing the public interest, may become a community of corporations influenced by partial views, and perhaps in a little time (under the direction of artful men) composing an aristocracy destructive to the Constitution and independence of the State.

6. Because, though the title of the bill professes to incorporate the tradesmen and mechanics of the city and county of New York, it does not, in fact, incorporate any but the forty-three persons named in the bill, and invests them with a discretionary power either to incorporate or not incorporate the mechanics of the city and county of New York; a power by no means to be entrusted to any but the representative body of the people. And by a singular solecism in politics, instead of directing that the mechanics at large choose their trustees, they direct that the trustees or members of the corporation shall renew themselves out of the community at large, thus providing only for the extent and perpetuity of their own power; the twelfth clause directing "that they elect and choose, in such manner and form, and upon such terms and conditions, as shall be ordained for that purpose by any of the said by-laws or ordinances of the said corporation, such and so many persons to be members of the said corporation as they shall think beneficial to the laudable designs of the said corporation." By this clause, the forty-three persons named in the bill may at pleasure confine the corporation to its present number or increase or diminish it

from twenty-five members to twenty-five thousand; nor are they by any part of the bill confined to choose out of the mechanics of the city and county of New York, but may extend their incorporation to all the mechanics in this or any other State.

By this clause too, they are unrestrained in the imposition of the terms upon which other mechanics are to be admitted. If the law will be attended with inconveniences to the mechanics that compose the corporation, it should be rejected on that ground, nor should so useful a body of men be permitted to injure themselves. If, on the contrary, it holds out advantages to them, their admission into the corporation should not depend on the will of forty-three mechanics, but should extend without restriction to all other mechanics that now do or hereafter may exercise their trades within the city and county; and the Legislature should prescribe the terms of their admission without leaving a door open for the richer and more powerful to oppress or govern those who are less opulent.

7. Because the forty-three persons named in the bill, and their successors, are not only empowered to elect members for the said corporation, but to make by-laws, and judging upon those laws to expel their members for the infraction thereof; so that, by an improper use of two powers, that should never be united—the legislative and judicial—they may acquire and establish an unbounded control over the other mechanics of the city and county.

8. Because, by the seventh clause, they are not only empowered to make by-laws for certain definite purposes, but “for regulating all other their affairs and business as they or the major part of them, so met, shall judge best for the *general good* of the said corporation and for the more effectual promoting the beneficial designs of the institution, and the same to alter, amend and repeal from time to time as they shall conceive most conducive to the interests of the said corporation and the promoting the public good, &c., so as the same by-laws be reasonable in themselves and not repugnant to the Constitution or laws of this State, or of the laws and ordinances of the mayor, aldermen, &c. The first of these restrictions is too vague to amount to anything. Many measures may be reasonable that under particular circumstances are highly inexpedient; so that the objects of the by-laws of this cor-

poration are entirely indefinite, and as it would seem, extend to the *promotion of the public good*, an extent which includes all the powers of legislation, provided they do not contravene the laws and Constitution of the State, and of the mayor, aldermen, &c. And this construction is more fully justified by the last clause of the law, which restrains them from limiting the price of labor; thereby evincing that the Legislature conceived that without such restraint, the by-laws of the corporation would have extended to that object, and of course does in its present form extend to an infinity of others which may be equally injurious to the community.

9. Because the interests of the State require that every encouragement should be given to industrious emigrants; no stranger who may choose to reside among us should, therefore, besides the unnecessary and useless expense of taking up his freedom, be compelled to struggle against a combination vested with corporate powers and interested in keeping him unemployed.

10. Because the bill authorizes the corporation to hold estate to an unlimited amount, confining them (if that can be called confining) to one thousand five hundred pounds a year *beyond outgoings and reprisals*.

11. Because no provision is made to direct the purposes to which this unbounded income is to be applied; to prevent the fraudulent or improper uses of it, and to render the corporation accountable for the expenditure, or subject to any inspection which has hitherto been customary in every eleemosynary corporation; either the founder or ordinary having the right of visitation, whereas no ordinary exists under the present Constitution.

12. Because experience having hitherto pointed out no inconvenience in having the mechanics on the same footing with the other members of the community, the bill holds forth no object sufficiently important to induce the change of a system under which they have happily prospered for a series of years, in favor of one that presents many apparent inconveniences, and which in its operation may be more extremely mischievous than human prudence can at present foresee.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *March 9, 1785.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the indemnification of the commissioners of sequestration, and the commissioners of forfeitures, and the lessees under them, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, reported by Chancellor Livingston, viz.:

1. Because the first clause of the bill enacts "that the late commissioners of sequestration in the several counties of this State, shall be and are hereby declared to be indemnified for all and every lease and leases made or given by them for lands or tenements, the property of persons who, during the late war, have gone over to, remained with or joined the enemy, and that no suit or suits already brought shall be maintained or hereafter commenced against the said commissioners of sequestration or against any person or persons holding under them, or by any person or persons claiming property in or to any such lands or tenements." If the commissioners have pursued their powers, such indemnification is unnecessary; if they have exceeded or violated them, the subject is as much entitled to his damages as to any other part of his property, nor can it be consistent with the spirit of a free Constitution, by law and without trial, to deprive him of it; though perhaps the Legislature may conceive it just to compensate the commissioners out of the treasury of the State, when it shall appear on trial that by any extraordinary and well meant exertion, he has rendered services to the community, and that in consequence thereof damages have been recovered against him.

2. Because, if lands should be claimed by persons not holding under those who have gone to the enemy, but by a different title, or if the commissioners have exceeded their power in giving long leases, the persons entitled to the possession are by this law precluded from the legal means of recovering their rights.

3. Because, as the State can do no wrong, unless suits against their officers are rather encouraged than checked, the subject will in many instances suffer injustice, neglecting the legal means to do himself justice, least by an *ex post facto* law, he

should find his attempts frustrated, and his damages increased by the costs and expense he has been at; by which means persons clothed with public authority, whose conduct should most narrowly be watched, will be tempted to commit acts of violence and oppression.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March 9*, 1785. Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to prevent delay in the collection of taxes and for giving relief in certain cases,*" was before the Council, which adopted the following objections, reported by Chancellor Livingston, viz.:

1. Because the first clause of the bill prohibits the issuing of injunctions in case of actions brought by collectors; the tax law referred to having vested more extensive power in the hands of assessors than is usual in free governments, and subjected to their disposition the property of citizens of this State almost without control; and subsequent laws having, in like manner, subjected the personal liberty, as well as the property, of the people of this State to them and the collectors, it does not appear for the public good, or consistent with the spirit of the Constitution, that they should be freed from every species of restraint in the execution of such dangerous powers. The law which prohibits the issuing of certiorari in cases of this nature, having left the party that may be injured without remedy at common law, though he should not have been an object of the tax law; though he should have paid his tax though the justice of the peace who tried the cause should have refused him a jury, to which, by the law and Constitution, he is entitled; though he should have admitted illegal testimony, or rejected that he was bound to admit, or in any other way discovered the most flagrant partiality and ignorance, the party, if unable to pay the tax, must stand committed, without limitation

of time, unless relieved in a Court of Equity: because to take this, also, from persons who may conceive themselves aggrieved by the operation of these laws, is to deprive them of the benefit of the law, the inherent birthright of every free subject, and to establish a maxim, which the most arbitrary governments will not avow, that a right may exist without a remedy.

2. Because the second clause of this bill gives a power to the supervisors in the counties, and to the mayor, aldermen and commonalty in the city and county of New York, to hear and determine the claims of the persons who require restitution after having been unjustly rated, and thereby erects a number of new courts, not proceeding according to the course of the common law, in direct violation of the Constitution of this State.

3. Because, though it is grounded upon a presumption that injustice may be done to the party applying for relief, yet it gives no adequate relief to one whose property may have been unjustly taken from him and sold at half its value, or to those who may with equal injustice have suffered imprisonments under the tax law; nor does it even provide any means by which they may be discharged from such imprisonment.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *March 12, 1785.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to explain and amend an act entitled 'An act imposing duties on certain goods, wares and merchandise imported into this State,' passed 18th November, 1784,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because every attempt to regulate trade by one State, without the concurrence of others, will produce injury to such State, without effecting any general good.

2. Because partial burdens imposed on the trade of a foreign power, by any particular State, may produce partial restraints on

their part upon the trade of such State. Should this be the effect of the bill under consideration, the commerce of this State may be irretrievably ruined before any remedy can be applied.

3. Because the United States having appointed ministers to form a treaty of commerce with Great Britain, this bill may probably obstruct the treaty or contravene such articles as they shall have agreed upon, and the law in its operation be construed into an infraction of the treaty, before an opportunity can be offered to the Legislature to repeal the same.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March 21, 1785.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act for the gradual abolition of slavery within this State,*" was before the Council, which adopted the following objections, reported by Chancellor Livingston, viz.:

1. Because the last clause of the bill enacts that no negro, mulatto or mustee shall have a legal vote in any case whatsoever; which implicatively excludes persons of this description from all share in the Legislature, and those offices in which a vote may be necessary, as well as from the important privilege of electing those by whom they are to be governed: the bill having in other instances placed the children that shall be born of slaves in the rank of citizens, agreeable both to the spirit and letter of the Constitution, they are as such entitled to all the privileges of citizens, nor can they be deprived of these essential rights without shocking those principles of equal liberty which every page in that Constitution labors to enforce.

2. Because it holds up a doctrine which is repugnant to the principles on which the United States justify their separation from Great Britain, and either enacts what is wrong or supposes that those may rightfully be charged with the burdens of government who have no representative share in imposing them.

3. Because this class of disfranchised and discontented citizens, who at some future period may be both numerous and wealthy,

may, under the direction of ambitious and factious leaders, become dangerous to the State and effect the ruin of a Constitution whose benefits they are not permitted to enjoy.

4. Because the creation of an order of citizens who are to have no legislative or representative share in the government, necessarily lays the foundation of an aristocracy of the most dangerous and malignant kind, rendering power permanent and hereditary in the hands of those persons who deduce their origin through white ancestors only; though these, at some future period, should not amount to a fiftieth part of the people. That this is not a chimerical supposition will be apparent to those who reflect that the term *mustee* is indefinite; that the desire of power will induce those who possess it to exclude competitors by extending it as far as possible; that, supposing it to extend to the seventeenth generation, every man will have the blood of many more than two hundred thousand ancestors running in his veins, and that if any of these should have been colored, his posterity will, by the operation of this law, be disfranchised; so that, if only one-thousandth part of the black inhabitants now in the State should intermarry with the white, their posterity will amount to so many millions that it will be difficult to suppose a fiftieth part of the people born within this State two hundred years hence, who may be entitled to share in the benefits which our excellent Constitution intended to secure to every free inhabitant of the State.

5. Because the last clause of the bill, being general, deprives those black, mulatto, and mustee citizens who have heretofore been entitled to a vote, of this essential privilege; and under the idea of political expediency, without their having been charged with any offense, disfranchises them in direct violation of the established rules of justice, against the letter and spirit of the Constitution, and tends to support a doctrine which is inconsistent with the most obvious principles of government, that the Legislature may arbitrarily dispose of the dearest rights of their constituents.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

CITY OF NEW YORK, *March* 28, 1785. Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to remove doubts respecting an act entitled 'An act to abolish entails; to confirm conveyances by tenants in tail; to distribute estates real of intestates; to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future,' passed the 12th July, 1782,*" was before the Council, which adopted the following objections, reported by Chancellor Livingston, viz.:

1. Because, among other things, it enacts "that where any lands, tenements or hereditaments have at any time heretofore been or hereafter shall be devised, granted or otherwise conveyed to any person or persons for life, to take effect after the determination of another estate for life, by means of a devise or conveyance to trustees, to preserve contingent remainders or otherwise, the person or persons to whom the estate for life has been or shall be first as aforesaid given, devised or granted shall, if living, be seized of such lands, tenements and hereditaments in fee simple, or otherwise, the person or persons in full life who, by virtue of such devise, grant or conveyance is or are intended next to succeed to an estate for life in such lands, tenements and hereditaments, shall be seized of the same in fee simple."

Which restriction must, on many occasions, be extremely inconvenient, where the peculiar situation of a family may require a particular provision that in most cases can only be made by means of trustees to preserve contingent remainders, and because no evil is to be apprehended from this source, as the law has provided against the creation of perpetuities by this means, if estates tail are destroyed.

2. Because the above clause of the law retrospects, and may, of course, defeat the reversions and remainders to which, by law, many persons are now entitled, and contrary to the intention of the devisor, and perhaps to the ruin of his family, may give a fee simple estate to a widow by a second marriage, or a profligate child, for whom he only designed to provide for life.

The Senate refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *April 4, 1785.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to enable persons to discharge debts due to this State for moneys loaned while this State was a Colony,*" was before the Council, which adopted the following objections, reported by Chief Justice Morris, viz.:

The Council object against the said bill becoming a law of this State as inconsistent with the public good:

Because the said bill authorizes the loan officers, or the persons who have acted as loan officers, to pay to the treasurer of this State, the moneys they have received, in the same species of money received by them, without particularly directing such receipts to be of moneys due the loan office; and though it is just and right the public should receive from its servants such moneys as they have received for the public, and if such moneys have depreciated in their hands the public should sustain the loss, yet if such officer has at any time appropriated such moneys to his own use, he ought to account for the value of it at the time so appropriated; for, from the great depreciation of the paper money during the war, this bill puts it in the power of the loan officer to discharge himself from the public with a much less sum than he received, whereby the public sustains a certain loss; for if a loan officer, in 1776, received £1,000 in Continental money, he laid out this money in the year 1777, before any depreciation had taken place; pursuant to this bill he procures at this day £1,000 Continental money, at one hundred and forty for one—by this means he pays a debt of one thousand to the public with about seven pounds, three shillings; and if any advantage has arisen from the use of the money, the loan officer will receive it, and the public must be set down with the greatest possible loss on the depreciation, which is nine hundred and ninety-two pounds, seventeen shillings, out of the thousand: which difference goes to the advantage and reward of the loan officer for not doing his duty.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, April 5, 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to appoint the place of holding the Supreme Court of Judicature of this State in future; and to prolong the terms thereof, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, reported by Chief Justice Morris, viz.:

1. Because, the bill supposes a person may commence a suit in the Supreme Court for a debt of £100 or under, with no other inconvenience or loss than that of being obliged to accept of such costs only as he would have been entitled to had he commenced his suit in an inferior court; whereas the bill is so worded that any plaintiff who shall commence a suit in the Supreme Court, when the sum in demand does not exceed £100, will forfeit the sum of £20 by virtue of the act in the said bill mentioned.

2. Because a great number of the actions which must be brought in the inferior courts, should this bill pass into a law will be removed into Chancery, for no other cause than that the witnesses who are to give testimony in them reside without the jurisdiction of the court, in which cases the party wanting the testimony must bring his certiorari bill in Chancery, whereby great costs will be created, and suits delayed to the great injury of the parties, and against the public good.

3. Because, by the Constitution of this State, the Judges of the Supreme Court are vested with the sole power of appointing the clerks of the said court; and should this bill pass into a law, the clerk for the time being of the said Supreme Court will be authorized and required to appoint a deputy clerk of the said court, who shall keep his office in the city of Albany, which deputy clerk may be so appointed, not only without the consent but against the approbation of the said judges, in direct violation of the Constitution of this State.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, April 6, 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to incorporate the German Society for encouraging emigration from Germany; relieving the distresses of emigrants, and promoting useful knowledge among their countrymen,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because, however useful and laudable it may be in the State, by their acts, to encourage foreigners to settle upon our waste lands, to relieve the distresses of the unfortunate, and diffuse knowledge among the ignorant, yet it will be productive of the most fatal evils to the State to introduce into it a great number of foreigners, differing from the old citizens in language and manners, ignorant of our Constitution, and totally unacquainted with the principles of civil liberty, under such circumstances as will naturally tend to keep them a distinct people, and prevent their blending with the general mass of citizens with one common name and interest.

2. Because it will establish a precedent under which the emigrants from every nation in Europe, Asia and Africa, who incline to seek an asylum in this State from the oppression and tyranny which too generally prevail in the Old World, to claim similar establishments, each of which will be under the influence and direction of those who govern the measures of their respective corporations, as to those they must look for protection and charitable relief upon their arrival, and instructions after their settlement.

3. Because the establishment of a corporation, sixth-seventh parts of the governors whereof are to be resident in the city of New York, and who must eventually, from the very nature of the institution, have great influence over a large number of freeholders and electors in the State, may be attended with very pernicious consequences, should the supposed interest of this city at some future period interfere with that of other parts of the State.

4. Because, though great care is taken in the provisions of the bill that the revenues of the corporation should never exceed £1,500 per annum, over and above all incumbrances and reprints, yet it will not be very difficult so to contrive the incumbrances

that the corporation may have the actual disposal of £15,000, or any greater sum a year, without endangering their charter.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *April 11, 1785.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to cure certain defects in deeds and conveyances of real estate,*" was before the Council, which adopted the following objections, reported by Chancellor Livingston, viz.:

Because, being retrospective, and not confined to such deeds only as have been accompanied by possession, it will tend to revive dormant claims, defeat bona fide sales and encourage litigation, as will be apparent to those whose profession must have given them frequent opportunities of seeing the number of deeds of this nature that now exist, without conveying any right.

The Assembly refused to pass the bill; consequently it did not become a law.

CITY OF NEW YORK, *April 20, 1785.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act incorporating the inhabitants residing within the limits therein mentioned,*" was before the Council, which adopted the following objections, reported by Chief Justice Morris, viz.:

1. Generally, because the increase of corporations with extensive powers is destructive of equal liberty, tending to the subversion of the Constitution and government of the State.

2. Particularly, because, by the said bill, the mayor, recorder, aldermen and assistants of the said city of Hudson are authorized to make by-laws for the regulation of the internal police of the said city, and thereby to ordain, limit and provide such pains, punishments and penalties, fines and amerciaments upon, towards

and against all and every person that shall offend against such by-laws, which pains and punishments are to be inflicted by the judgment and order of the said mayor, recorder and aldermen; and the said penalties, fines and amerciaments are to be sued for and recovered before them, and for the use and advantage of the said mayor, recorder and aldermen, thus blending the legislative, the executive, and the judicial departments in one, which must, in its consequences, be destructive of the rights and liberties of the citizens of the State, residing within the limits of the said city.

3. Because, by the said bill, the aldermen of the said city, who are elective by the people thereof, are made Judges of the Mayor's Court within the said city, thereby counteracting the Constitution of this State, which ordains that all officers who were not theretofore elective, should be appointed by the Governor, by the advice and consent of the Council of Appointment, and thus subjecting the decision of the property of some of the citizens to judges elected by others, in which they can have no agency.

The Senate passed the bill, but subsequently, on reconsideration, refused to pass it; consequently it did not become a law.

NEW YORK, *April* 20, 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to vest the estate of William R. Van Cortlandt in trustees for the payment of his debts, and other purposes,*" was before the Council, which adopted the following objections, viz.:

Because the fact as to the insanity of the said William R. Van Cortlandt ought not to depend on the mere suggestion of his wife and creditors, as stated in the preamble of the bill, but should be solemnly ascertained under the usual commission out of Chancery, to justify the passing a law divesting him of his property; and

Because, by the said bill, the trustees therein named are directed, first, "to pay and discharge all mortgages due on the said estate of the said William R. Van Cortlandt; secondly, to pay and satisfy all judgments that may be docketed against the said

William R. Van Cortlandt," giving an undue preference to mortgages where there may be prior judgments; whereas, by law, they are entitled to such preference according to priority.

Notwithstanding the objections, the Legislature passed the bill into a law.

NEW YORK, April 20, 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act to enable the mayor, aldermen and commonalty, in common council convened, to order the raising moneys by tax for the maintenance of the poor, and other contingent expenses arising in the said city*" (of New York), was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because it would be inconsistent with the public good to authorize the corporation to tax the citizens in order to raise moneys for the very purposes for which, it is to be presumed, the large estate they are allowed to hold was intended to provide, unless they show to the satisfaction of the Legislature that the increasing revenue arising from the public slips, docks and markets, and the rent of corporation lands, prove insufficient for the purpose.

2. Because, though it may not be improper to afford occasional assistance to such incorporation, to repair the damages brought about by war and other unforeseen calamities, yet it may be attended with consequences of a most alarming nature to the State, if the different corporations (which are to most purposes independent republics) should be enabled to levy large sums annually from the inhabitants, within their respective jurisdictions, especially while they possess the uncontrollable power of appropriating and expending such moneys as they may think proper; for though the purposes to which the moneys are to be applied may be mentioned in the law, yet, as the present members of the corporation are accountable, if at all, only to their successors, and they again to theirs, it is scarcely possible, in the nature of things, that it should ever be known whether the whole or what part of the moneys shall have been expended according to the intention of the Legislature.

8. Because, as the commission of Oyer and Terminer and General Gaol Delivery for the city and county of New York expired on the third day of January last, by reason of the non-attendance of such commissioners as were members of the corporation, whereby a number of criminals have been detained in the prison who would otherwise have been punished or discharged, it would be unjust to levy a tax upon the citizens at large for the support of those prisoners, which is one of the purposes mentioned in the bill, and which would operate as a fine upon the citizens for the negligence of the magistrates.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, April 22, 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the relief of William Gilchrist,*" was before the Council, which adopted the following objections, reported by Chief Justice Morris, viz.:

For, although the case of the said William Gilchrist may be extremely hard, and it might be proper to direct the suit in the bill mentioned to be carried on at the expense of the public (under whom he claims by deed with warrantee), or *in forma pauperis*, yet it cannot justify so extraordinary a remedy as the bill provides.

Because, by the bill, a decision is given in a case depending in the ordinary courts of justice, whereby judicial powers are exercised by the Legislature, and the subject, contrary to the letter and spirit of the Constitution, deprived of one of the dearest rights secured to him, a trial by jury. And thus, by subverting the known established course of law to meet a particular case for the ease of an individual, the barriers built up by the wisdom of ages for the security of property would, with the confidence of the public in the justice of government, be destroyed.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

CITY OF NEW YORK, April 26. 1785. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the payment of the salaries of the several officers of government, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

1. Because it is obviously inconsistent with the public good, that the allowance to the representatives of the people for their services should continue to be the subject of partial provision at every new meeting of the Legislature; this practice being a manifest deviation, as well from ancient and established custom, as an existing law of this State, could only be justified by the particular circumstances which attended the late war, and ought to have ceased with it and given place to a permanent regulation.

2. Because, in the preamble to the eighteenth enacting clause, it is suggested that Rosena Rush has recovered a judgment or judgments in the Supreme Court of this State, against Garret Ackerson, Isaac Coe and John De Ronde, for taking and delivering a number of cattle to the Commissioners of Sequestration for the county of Orange, which cattle were forfeited to the people of this State by the conviction of John Rush, husband of the said Rosena Rush, and that sufficient reasons have been assigned to the Legislature to relieve the said Garret Ackerson, Isaac Coe and John De Ronde from the said judgment or judgments; whereupon the said judgment or judgments are declared to be vacated and of no effect, which is such an assumption of judicial power by the Legislature as renders the property of the citizens of this State totally insecure, and is subversive of the fundamental principles on which all free constitutions are built. The Constitution and laws of this State have wisely provided that, in all questions of property, the matters of fact shall be found by a jury, who are sworn to determine, according to evidence, which must be delivered on oath, and that the law arising from such facts shall be declared by the judges, who are under equally solemn obligations to decide according to the known laws of the land, thereby affording the highest possible security to the subject; whereas, the members of the Legislature are under no such obligations in determining either upon the law or the fact. Besides, unless the defendants have suffered judgment to go against them from inattention to their interest, or

a consciousness of their inability to justify their conduct, the ordinary course of practice will give them ample relief, either upon a motion for a new trial or on a writ of error.

3. Because it is inconsistent with the public good thus to put into a bill providing for the payment of the public creditors, and which it might be presumed their necessities would induce the Legislature to pass, notwithstanding any objections, a matter totally unconnected with the general subject of it, and tending, if drawn into a precedent, to establish a mode of government absolutely inconsistent with the faintest idea of civil liberty.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *February 27, 1786.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for settling intestates' estates, proving wills and granting administrations,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because the eleventh and twelfth clauses erect a new court, not proceeding according to the course of the common law, and invest the Judge of Probates with all the powers and authority which have heretofore been exercised in matters testamentary by the ecclesiastical courts in the kingdom of England, extending his power even to the imprisonment of the subject. The Judge of Probates has hitherto exercised no other authority than that of determining upon the propriety of granting probates and letters of administration.

2. Because such new court is unnecessary, the courts now organized and known by the Constitution having ample powers to make decrees in similar cases, and to carry the same into effect.

3. While it extends the duties of the Judge of Probates, it deprives him of the greater part of the emoluments of his office, so that it is highly improbable that any person of sufficient integrity, ability and knowledge of the law, will in future be found to

exercise the same, unless the Legislature shall annex a salary to the office, and thereby unnecessarily increase the expenses of government.

4. Because it divides the probate office into eleven parts, ten of which are incompetent to decide in disputed cases, but must refer such cases to the Judge of Probates, by whom the probate is to issue; so that, independent of the additional expense of attending on both, it renders it uncertain in what place the will or probate is to be found, and make an inquiry at a future day more uncertain.

5. Because the eighth section enacts, that the surrogate keep the original wills that are proved before him, when it is highly improbable that proper persons will be found in every county, who will take upon them so troublesome an office for the small perquisites annexed thereto, or be at the expense of erecting offices to secure the papers, with which they are intrusted, from fire and other accidents; and as most will relate, as well to real as personal estates, there is reason to apprehend greater danger to property from their loss or falsification, more especially as in disputes that relate to land, nothing short of the original will is evidence.

6. Because the public and individuals have hitherto derived advantages, not only from the security which one deposit for wills, under the eye of a distinguished officer, affords, but from the facility which it gives creditors and others to acquire a knowledge of the disposition of estates on which they may have claims.

7. Because, by directing that no surrogate be appointed for the city and county of New York, and imposing the duty of surrogate for that city and county on the Judge of Probates, it necessarily obliges him to live in that place, and confines the appointment of Judge of Probates to some person residing there, to the prejudice of the other counties of this State, since it is hardly to be expected that, till a salary is annexed, any one properly qualified for this trust, will change the usual place of his residence, and take upon him a charge of this importance, without a more adequate support than that which arises from his perquisites of surrogate for the city and county of New York.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

CITY OF NEW YORK, *February 13, 1787.* Present—Governor Clinton; Morris, Chief Justice; Yates and Hobart, Justices.

A bill entitled "*An act for settling intestates' estates, proving wills and granting administrations,*" was before the Council, which adopted the following objections, reported by Chief Justice Morris, viz.:

The Council object to the said bill becoming a law of this State, as inconsistent with the spirit of the Constitution.

For that by the fourteenth, fifteenth and twenty-second sections of the said bill, the Judge of Probates is vested with the power and authority to hear and determine all causes touching any legacy or bequest in any last will and testament, payable or coming out of any personal estate, and to decree and compel payment thereof, by the imprisonment of the subject, and to proceed in all matters submitted to his cognizance, according to the course of the courts, having, by the common law, jurisdiction of the like matters.

The Court of Probates, in this State, derived its jurisdiction of proving wills and granting administrations from the government of England, where, although the clergy originally obtained it by usurpation, it became at last established and recognized by the courts of law. But as this State, while a Colony, never recognized an ecclesiastical establishment, the Court of Probates could not possess the power of decreeing the payment of any legacy or bequest, not having the compulsory process of excommunication to enforce obedience to its decrees.

The proceedings of the ecclesiastical courts in England are regulated according to the practice of the civil and canon law, and thus, in no instance, are the pleadings and proofs referred to the consideration of a jury.

Nor does this bill afford a remedy in cases where the constitutional courts of this State are incompetent. The Court of Chancery hath powers to decree on all testamentary bequests, and all the courts of record in this State are expressly vested with the cognizance of all controversies respecting this point, by an act passed the 17th day of December, 1743, entitled "*An act for the more speedy recovery of legacies within this Colony,*" as the Court of Equity then may, and the courts of law must refer, all facts in litigation to the consideration of a jury; the granting those additional

powers to the Judge of Probates, in exclusion of a trial by jury, is depriving the citizens of this State of a right secured to them and rendered inviolate by the Constitution, which declares the trial by jury as a firm and unalterable establishment, in all cases where it had been used while this State was a Colony, and is also an indirect infringement of that clause of the Constitution which prohibits the institution of any new courts, but such as shall proceed according to the course of the common law.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March* 19, 1787. Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act directing a mode of trial and allowing of divorces in cases of adultery,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

Because, by the second clause thereof, it is enacted, that it shall not be lawful for the party convicted to marry any person whatsoever, and that every such marriage shall be null and void, thereby preventing every person who may be tempted to falsify the marriage promises by the strength of a passion which had been struggled with, or perhaps suppressed for a time, either from a sense of its impropriety or the constraint of friends and relatives, or by the force of cool or illiberal treatment from the other party, from becoming thereafter a reputable member of society, unless by renouncing the comforts and gratifications which result from a connection between the sexes, and maintaining a degree of reserve and continency scarcely to be expected after such an instance of frailty. It might not, perhaps, be an improper punishment to confine offenders of this class to a state of perpetual celibacy and mortification within the walls of a cloister, but to suffer them to remain in society without a possibility of remarrying, is, in a degree, to compel them by law to live in the open violation of the rules of chastity and decency, and will, it is to be apprehended, have a pernicious influence on the public morals, by multiplying

examples of libertinism and prostitution, weakening the disgust that is generally felt for those practices, and rendering the illicit commerce of the sexes less disreputable than it is at present.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *April 11, 1787.* Present—Governor Clinton; Morris, Chief Justice; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act for the more speedy recovery of debts to the value of £10,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because, though it is not optional with the defendant in trespass, justifying under a plea of title, to have such plea determined by the justice, yet by the twelfth section he is punishable by double costs in case his plea should be found against him in the Court of Common Pleas.

2. Because the same clause obliges the party defendant before a justice to abide by a plea hastily put in when unassisted by counsel, and to justify under *his own title*, when, perhaps, such plea may deprive him of advantages of which he might otherwise avail himself, and that at the risk of double costs.

3. Because, besides the inconveniences to the defendant attendant on this clause, others will result to the public from the multiplication of suits. Should this bill pass into a law, every plaintiff in trespass will first commence his action before a justice of the peace, in order to avail himself of errors into which the defendant may be led by his plea of justification, and at the same time insure double costs if he should succeed, which, in many cases, may greatly exceed the damages sustained.

4. Because, though from the whole tenor of the bill it may be collected that it was not intended to intrust the Justice's Court with any greater power than that of trying causes to the value of £10, yet by the eighteenth clause in the bill, if the defendant shall neglect or refuse to plead and give in evidence his, her or

entitled "An act for regulating the fees of the several officers and ministers of the Courts of Justice within this State," passed the 18th of April, 1785, is repealed immediately on the passing of this bill into a law, whereby no rule is left for the taxation of costs, for services that have been or shall be performed before the said first day of June next.

The Assembly passed the bill, but the Senate refused; consequently the bill did not become a law.

CITY OF NEW YORK, *February 7, 1788.* Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act for apprehending and punishing disorderly persons,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

The Council object against said bill becoming a law of the State as inconsistent with the spirit of the Constitution and the public good.

Because the offenses mentioned in the act are so indefinitely described, and the powers given to a single magistrate in some instances, and to the justices in session in others, so extensive, without the intervention of a jury, as to endanger the freedom of the citizens of this State, which consists in being governed by the laws alone, and not by the discretion of the magistrates.

The first offense is that of persons who shall *threaten to run away* and leave their wives and children to the city or town. This offense consists only in words which may be uttered in jest and exaggerated by malice, or which family dissensions may draw from an irritable man laboring under domestic misfortunes, and would be too severely punished by imprisonment, scourges, and hard labor in a house of correction.

Another set of offenders subject to similar punishments are those who, not having wherewith to maintain themselves, live idle and without employment. The being idle and without employment is often involuntary and owing rather to misfortune than vice; and were it otherwise, it would be more consistent with the spirit of

our government to leave it to the punishment which naturally attends it—penury and want—than to establish an arbitrary inquiry into the lives and conduct of free citizens, or to take from them, by the ignominy of their punishment, all hope of employment in future. Similar objections lay to the including of all jugglers. This being indefinite may, by the ignorance of a single justice of the peace, be extended to the punishment of persons who endeavor to turn to their own profit and the pleasure and advantage of society the discoveries in natural philosophy and the improvements in mechanism which the present enlightened age have given birth to. Nor is the clause less exceptionable which includes all persons *pretending to have skill in physiognomy, palmistry, or the like crafty science*. The pretending to knowledge of any kind which the pretender does not possess may be weakness and folly, but can never be a crime, unless the pretense is applied to evil purposes; but if the bill should pass into a law, the *pretense* alone, without any act, may draw after it the heavy punishment of imprisonment, hard labor in a house of correction, stripes or servitude, at the discretion of the justices. This is the more peculiarly severe from the various constructions which ignorance or prejudice may put upon these indefinite terms, "*or the like crafty science*." There are few persons who have not suffered their judgment of men to be biased by their countenances. As it is still doubtful how far a skill in physiognomy may be acquired by time and study, and as we have yet experienced no inconvenience from its profession, it cannot be right to obstruct the improvement of which it may possibly be capable.

The following description of offenses tend to great oppression: "All persons who run away and leave their wives and children, whereby they respectively become chargeable to any city or town." This is exceptionable, from the difficulty of determining the motive with which a man may leave his family and the causes which may have retarded his return. It may include persons who leave them with a view to provide better for them than they can do by staying at home; it will include those unhappy men whose misfortunes compel them to avoid an unrelenting creditor. Nor is there any man, whatever his present circumstances may be, who may not (through misfortune) incur the heavy penalties annexed

to this bill, should it pass into a law. The man who breaks the endearing ties which bind him to his family, more frequently deserves commiseration than punishment, and it certainly would as little consist with humanity and the principles of equal liberty to leave such persons, when poor and friendless, to imprisonment, whips and servitude at the discretion of the magistrate.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March 20, 1788.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act to extend the powers of the commissioners of the land office to the cases therein mentioned, and for other purposes,*" was before the Council, which adopted the following objections, viz.:

For that the clause which directs the sale of Nutten or Governor's Island is inconsistent with the public good, inasmuch as the consideration resulting from such sale cannot benefit the State so much as the loss thereof may be detrimental in depriving the public of an island whose advantageous situation the bill itself declares necessary for fortifications and works of defense; for which, although it may not be immediately necessary, yet the future safety and convenience of the State suggest the propriety of retaining it. Nor can the providing clause, by giving a discretionary power to the commissioners of directing the reservation of such parts thereof for fortifications as they shall deem proper, remove the objection, as the probable views of government may be more extensive than works of defense only. But should that not be the case, the buildings and improvements which will probably be made thereon, when sold in small lots, will defeat the object intended to be provided for.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March 22, 1788.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for the relief of the creditors of William Van Derlocht, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

The Council object against the said bill becoming a law of this State as against the spirit of the Constitution.

For that by the last clause, the persons therein named, confined upon execution in the several gaols therein mentioned, although their several debts should exceed the sum of £10, are to be discharged from custody and the plaintiffs have no other remedy for the recovery of their demands but against their property, if any they have or can be found. However proper it may be to extend the benefit of this act generally to objects confined for small sums, and where the future industry of such persons afford a reasonable prospect to the creditors of being paid thereafter, yet this will, by no means, apply to larger debts: besides, by the known existing laws of this State, such plaintiffs have, by a judicial process, established their demands and they remain of record; and such an interference of the Legislature, by a partial law in favor of particular individuals, renders property insecure and subverts the fundamental principles of the law of the land, the great and only palladium, and security for the rights and property of the people.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *March 22, 1788.* Present—Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for directing the settlement of the public accounts, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

For that, although the citizens of this State, standing upon equal footing, are entitled to equal remedy and equal relief in similar cases, yet, by the clause of the said bill respecting the lands of

Theodorus Snedeker, chargeable with several legacies, the purchaser is indemnified by a direction to the Treasurer to pay the several legacies upon the report of the Attorney-General, and by one other clause in the said bill, relative to a certain tract of land conveyed to Cornelius Decker forfeited by the attainder of Latting Carpenter, it is directed that the several sums due to the respective purchasers should also be paid by the Treasurer of the State. But by the said bill, the estate of Waldron Blauw, which was devised to him by the will of Richard Waldron, deceased, and subject to the payment of sundry legacies, is granted to his widow and children without any provision for the payment of the said legacies; and by one other clause of the said bill, respecting the lands of Joshua T. D. St. Croix, conveyed to Thomas Pearsall, and the sale of which lands, by the said bill, is admitted to be prior to the conviction of the said Joshua T. D. St. Croix, yet the said Thomas Pearsall is to receive no other recompense (though the purchasers of Carpenter's lands are to be paid in money) than a certificate from the treasury: thus, in one instance, providing an adequate remedy, in another a partial one, and in a third none; and thereby making an odious and unjust discrimination between citizens whose cases, from the very face of the bill, appear exactly similar. The Council further object to the said bill, generally; because it regulates and provides for many cases totally distinct and independent of each other, and should objections by this Council be ever so well taken to any part of the said bill they must either be overruled and the bill become a law, or the whole-some provisions therein contained, owing to this improper mode of legislation, be lost.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, July 15, 1789. Present—Governor Clinton; Livingston, Chancellor; Yates, Justice.

A bill entitled "*An act prescribing the manner of holding elections for Senators to represent this State in the Senate of the United States,*"

was before the Council, which adopted the following objections, reported by Justice Yates, viz.:

1. Because the Constitution of the United States directs that the Senators be chosen from each State by the Legislature thereof. If by the Legislature, is intended the members of the two houses not acting in their legislative capacity, no law is necessary to prescribe the mode of election; concurrent resolutions extending in this case as well to the mode of election as to the choice of persons, and the bill, as far as it goes, operates as a restriction upon the constitutional rights of the two houses. If the Legislature are only known in their legislative capacity, the Senators can constitutionally be appointed by law only, and no considerations arising from inconvenience will justify a deviation from the Constitution of the United States.

2. Because this bill, when two Senators are to be chosen, enacts that in case of the disagreement of the two houses in the nomination, each house shall, out of the nomination of the other, choose one, and that such person shall be the Senator to represent this State; and thus, by compelling each house to choose one of two persons, neither of whom may meet with their approbation, establishes a choice of Senators by the separate act of each branch of the Legislature, in direct opposition to the Constitution of the United States, which, in the third section of the first article, declares that they shall be chosen by the Legislature.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 3, 1790. Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act for the relief of John Henry and others*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the case of John Henry not differing in any sort from that of every other debtor, three-fourths of whose creditors refuse to sign his discharges, it affords a special remedy, inconsis-

ent with the general law of the land, and subversive of those contracts which are made under the faith of existing laws.

2. Because the account to be given in of his debts and credits of his property is not to refer to the time of his discharge, but to the time that he became bankrupt, which is liable to two objections: First. That the time of his becoming bankrupt is uncertain in itself, and is a question of law which the debtor should not determine in such way as he may find most advantageous to himself; and Secondly. That it deprives his creditors of such property as he may have acquired since such act of bankruptcy.

3. Because, in stating his debts, he is only directed to give an account of the moneys by him owing to his creditors respectively, on the day he became a bankrupt, which may not include debts payable at a day subsequent to such bankruptcy; and yet his discharge is to go to such debts.

4. Because the oath directed to be taken by the said John Henry is essentially different from that prescribed by the "Act for giving relief in cases of insolvency," and does not make adequate provision for the discovery of frauds.

5. Because it does not require an assignment of his whole property, but enables a majority of the creditors (whatever may be the value of their demands) to determine what part of his property he shall retain, to the injury of his other creditors.

6. Because no mode is pointed out to ascertain the justice of the demands against the said John Henry, other than his oath.

7. Because the second clause of the bill, which permits one joint partner to be wholly discharged and another partner who is liable to pay the company debts, as the law now stands, and may be capable of so doing, to be discharged by paying only one-half the debts due from the partnership, is such a direct violation of the known and established rules of law as must strike at the root of all commercial credit.

8. Because the third clause of the act discharges a number of debtors upon their own petition only, without calling in their creditors, or hearing what their claims may be, or what reasons they may have to suppose that such debtors are able to discharge their debts, or what frauds they may have been guilty of in contracting the same or in covering their property.

9. Because it permits the judge to appoint an assignee to the said debtors without the assent or knowledge of the creditors, though they are materially interested in the character and conduct of such assignee.

10. The Council object to the whole law, as inconsistent with the public good, inasmuch as it erects the Legislature into a court to inquire specially into the case of every bankrupt upon *ex parte* evidence; an inquiry which necessarily leads to great expense, and renders the laws fluctuating and unstable.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *April 3, 1790.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to amend an act entitled 'An act to appropriate the lands set apart to the use of the troops of the line of this State, lately serving in the army of the United States, and for other purposes therein mentioned, and for extending relief to the persons therein named,'*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because the fifth clause of the bill directs the patents for bounty lands to issue to the persons who were originally entitled thereto, without referring back to the date of the concurrent resolutions or laws under which such land is claimed; which will tend to defeat the numerous sales and other dispositions that have been made of the said lands, by wills or otherwise, in consequence of and under the faith of the said concurrent resolutions and laws.

2. Because, where the parties entitled to such lands are dead, it directs that the patents issue to their heirs, notwithstanding any devise they may have made of the same. Thus, in many instances, a right in the said lands devised to the wife for her support and maintenance, and which, perhaps, she has sold or mortgaged for the maintenance of her family, may be transferred to a distant relation.

The Assembly refused to pass the bill; consequently it did not become a law.

September 28, 1790, Robert Yates was appointed Chief Justice in place of Richard Morris resigned; and John Lansing, Jr., Justice in place of Yates.

NEW YORK, *February* 21, 1791. Present.—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to invest the mayor, aldermen and commonalty of the city of New York with power to license and regulate the fees of hackney coaches, and to lay a tax on all wheel carriages within the city and county of New York,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

The Council object to the said bill becoming a law of this State, as inconsistent with the spirit of the Constitution and the public good.

1. Because, by the second clause of the said bill, it is, among other things, enacted "that it shall be lawful for the mayor, aldermen and commonalty of the city of New York, in common council convened, annually to license and regulate the fees of hackney coaches, and lay a tax on all wheel carriages within the city and county of New York, to be collected in such manner as the said mayor, aldermen and commonalty shall direct and appoint, provided that the tax to be laid shall not in any year exceed the following sums, to wit, on each coach or chariot six pounds, on each phaeton three pounds, on each curricule or chaise two pounds, on each riding chair or sulkey thirty shillings, on each brewer's dray three pounds, and on each cart or wagon fifteen shillings; and provided that no tax shall be laid or levied on any cart or carriage, the wheels of which are not bound with iron;" thereby vesting them not only with the power of laying taxes, a power inherent in the Legislature, and not transferable to any other body of men, but a further power of *collecting* the same in such manner as they shall appoint: an unlimited power, which may not only justify improper searches, but extend even to the imprisonment of free citizens. Whatever confidence may be justly reposed in

the character of the members of the corporation, it should ever be remembered that the freedom of a government consists not in the prudence of the magistrate, but in the limitation of his powers, and that he who holds his liberty at the discretion of another, is the slave of his will.

2. The unconstitutionality of this bill is the more strongly impressed upon the Council from comparing it with the twelfth clause of the law entitled "An act concerning the rights of the citizens of this State," which, among other things, enacts "that no citizen of this State shall, by any means, be compelled to contribute to any gift, loan or tax or other like charge, not set, laid or imposed by the Legislature of this State." If this law is explanatory of our rights, and essential to liberty, it must mean that the precise sum to be paid should be set by the Legislature, and it would certainly be a violation of this law to permit any other persons either to lay a tax or not to lay a tax at their discretion, to omit some and to charge others, even though this power should be exercised within certain limits; yet this is proposed by the bill under consideration.

(1.) The corporation may lay the tax, or they may permit the inhabitants to mend the pavements as they now do at their private expense.

(2.) Though the limits that they shall not exceed are prescribed, yet no rule of proportion is established, and within those limits they are arbitrary. They may lay the whole tax upon carts, provided it does not, on any cart, exceed fifteen shillings, and omit coaches; or they may charge coaches and omit carts according as the interest of the rich or poor may prevail in the corporation: they may tax all carriages alike, or they may vary the tax on some from one penny to six pounds.

(3.) If the imposition of this tax be arbitrary, its disposition is equally so. It is, indeed, to be applied to repairing the pavement, but the manner how and the time when are not declared. The pavement is at present repaired at the expense of the proprietors of the lots; the law does not declare that they shall be relieved from this burden in consequence of this new tax, or how far they shall be relieved if it should prove inadequate to the object. The corporation may then cause the whole of the tax to be

applied to the pavement of one street, while that of others must be made by the inhabitants at their own expense. Nor does this tax resemble the county rates. There the *assessments* and *collection* must be made by the legal officers. The quantum of the tax is limited by the actual expenses of the county, the mode of collection is ascertained, no discretion is left with the supervisors as to the imposition of the tax, in the application of the money after it is levied; nor above all can they exempt one citizen and charge another. A striking distinction arises, too, from the circumstances of the persons with whom this power is invested. The supervisors have, from the infancy of this government, exercised these powers, and are elected by the people, with a view to this object; the money collected never goes into their hands, nor have they any control over it. The corporation is chosen for very different purposes; some of its members are not eligible by the people, and hold their offices at the pleasure of the executive, nor are they accountable for the money that passes through their hands.

4. Because the bill is unnecessary. The law by its limitation expires in three years. The pavement of the city has been lately repaired by the inhabitants at a very considerable expense. If the carts have broad wheels, not bound with iron, the new pavements will not want repairs within that time. If bound with iron, it is probable the whole amount of the tax will be inadequate to the expense of repairs. The bill then first creates a necessity, and after imposes a burden to relieve it. If (as there is reason to suppose) the tax will not be wanted for some time, the empowering the corporation to call for it immediately is a real injury to the community, since it locks up a quantity of money which would otherwise be usefully employed.

5. Because the law militates against the very principles on which it is professedly founded. The preamble alleges that the repairing roads and pavements is too burdensome for individuals, when it is well known that roads are repaired by a general tax, and not by individuals; and that those that now repair the pavement (the owners of lots) are twice as numerous and much richer collectively than the persons upon whom the burden is to be imposed by the bill; and yet it is said that the latter are to furnish sufficient means for this purpose. Will it not follow, that the

burdens will be more oppressive to the less than it was to the greater number? The reason assigned for this change in the police of the city is, that coaches and other wheel carriages injure the pavement. If this is the principle of the law, the quantum of tax should be measured by the degree of injury. Now, it is a notorious fact, that one cart, which often carries fourteen hundred pounds weight on two wheels, if shod with iron, and which traverses the streets twelve hours out of twenty-four, must do more injury to the pavement than forty chairs which do not carry one-third of the weight, and only pass occasionally; yet the forty chairs doing the less injury, are to pay £60, while the cart which does the greater, cannot be rated at more than fifteen shillings. If it is said that the wealth of the proprietors is to be considered, then the bill possesses one principle and proceeds upon another, which is more strongly marked out by its declaring that carriages not bound with iron shall pay no tax. This holds up the idea that the iron-bound carriages only do the injury, and that where no injury is done there should be no charge. If then twenty carts shod with iron do more injury to the pavement than all the chairs in town, and only pay £15 for the right to do this injury, would it not be more consistent with justice and policy that they should continue to use no tire to their wheels as they have done these fifty years past, than that the owners of chairs should pay £300 a year to repair the injury they do. Or, in other words, can it be just that twenty cartmen, for £15 compensation, should be entitled to put another class of citizens to £300 expense? If the measure of the injury is not in this case the rule of taxation, the Council conceive the bill still more oppressive. The keeping a chair in this city and county is by no means an evidence of wealth, since many, from ill-health, the nature of their business, or situation at some distance from town, are frequently compelled to ride, while their richer and healthier neighbor walks, or rides on horseback, and finds equal advantage from regular pavements; yet one is to be exempted entirely, while the other, because he occasionally rides over the pavement with a light carriage, which can do no injury, is liable to a heavy tax.

6. Because it entirely changes a system which has hitherto worked no injury, and adds to the general mass of taxes, which

are necessarily extremely burdensome in this city. The ground adjoining to the lots was always considered as in some sort under the direction of the proprietor of the lot; if he paved, planted, cleaned or ornamented it, he had the immediate advantage and the credit of his improvement with his fellow-citizens. For this reason, every owner of the lots submitted to tax himself, and asked no compensation from the public; no money being raised for the purpose. It was a land tax which every man expected to pay when he purchased a town lot. The bill under consideration entirely reverses this rule, and aims at exempting the owners of town lots from a duty which they have never complained of, and which, now that the pavement is already made, must be comparatively light, in order to throw the burden upon others, who in numberless instances, hold not one foot of land within the city.

7. Because this bill disposes of a source of revenue which the wants of the State may one day render a proper subject of taxation. Although, standing alone, it is unequal and oppressive, yet, by a combination with others which the wisdom of the Legislature may hereafter suggest, it may be rendered equal and just.

The Assembly refused to pass the bill; consequently it did not become a law.

NEW YORK, *March 1, 1791.* Present—Governor Clinton; Livingston, Chancellor; Hobart, Justice.

A bill entitled "*An act to enable the mayor, aldermen and commonalty of the city of New York to order the raising moneys by tax for the purposes therein mentioned,*" was before the Council which adopted the following objections, reported by Justice Hobart, viz.:

1. Because the bill authorizes and empowers the mayor, aldermen and commonalty to raise a tax for certain purposes therein designated, and for other purposes not particularly pointed out, which the mayor, aldermen and commonalty, in common council convened, "shall think necessary and direct;" thereby leaving it to their discretion, either to provide for the poor, &c., or not to do it. If this provision is necessary, the power should be compulsory; if unnecessary, it should not be granted.

It allows an appropriation of money to certain uses which are not designated, and in which the corporation are to be guided by no rule but their own judgment; which power, in conjunction with a discretionary right to tax or not to tax, amounts to a full transfer of legislative authority as to this important object; and which, for reasons that the Council have lately assigned, appear to them inconsistent with the spirit of the Constitution, and the law declaratory of the rights of the citizens of this State.

Because this power, being vested in the corporation by their *corporate style*, and to be exercised in their *corporate capacity*, and for an unlimited time, without any superintending power to direct or even examine into the application of the money, amounts to a free gift of an annual revenue of £12,000 to the corporation of the city of New York to be raised by a perpetual tax on the citizens, and thereby not only deprives them of the superintending protection of the Legislature, but renders it doubtful whether, if this bill should prove oppressive, the Legislature could, with due regard to the rights of property, divest the corporation of it with more propriety than they could any other individual (for in this light corporations must be viewed) who holds an estate by gift of the Legislature.

The Assembly refused to pass the bill; consequently it did not become a law.

NEW YORK, *December 1, 1792.* Present—Governor Clinton; Livingston, Chancellor; Hobart and Lansing, Justices.

A bill entitled "*An act for electing representatives for this State, in the House of Representatives of the Congress of the United States of America,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

The Council object against the said bill becoming a law of this State, as inconsistent with the spirit of the Constitution and the public good.

1. Because it requires the canvassers to canvass and estimate all the votes contained in the boxes delivered by the sheriffs into the

office of the Secretary of the State, however great the excess of the number of ballots may be beyond the number of the electors named in the poll-lists; hence affording an opportunity for the commission of innumerable frauds: by the introduction of double ballots so artfully concealed as to elude discovery by the inspectors of the election, but which will nevertheless have the like effect with those fairly and *bona fide* delivered.

2. Because that part of the bill which requires the Chancellor and Justices of the Supreme Court in certain cases to canvass and estimate votes, is repugnant to the Constitution, which expressly declares "that the Chancellor and Judges of the Supreme Court shall not at the same time hold any other office excepting that of delegate to the general Congress on special occasions," the propriety of which disqualification is forcibly evinced in the present instance; the bill contemplating their appointments to an important and responsible station, in the exercise of the duties whereof, if mal or corrupt conduct should be attributed to them, and in consequence a prosecution or impeachment be instituted or preferred against them, they may either become subject to trial in the Supreme Court, where such members, with whom they had differed in opinion on the subject matter of the prosecution, preside, or in the Court for the Trial of Impeachments and Correction of Errors, of which such members are also judges, or be compelled to submit to a trial in the latter court when unavoidably destitute of those of its members who by the Constitution are considered as the only permanent law members thereof: nor can it be inferred that the duties intended to be imposed by the bill on the Chancellor and Judges of the Supreme Court are to be executed *ex officio*, a new oath being prescribed by the bill to be taken previous to the execution thereof. Besides, if the constitutionality of their appointment as canvassers was not in question, the duties enjoined by the bill on the Judges of the Supreme Court may in many cases prove incompatible with the exercise of the ordinary business of their offices, by requiring their attendance at the secretary's office at a time when an attention to their judiciary duties is indispensable at another place.

3. Because the oath directs the canvassers to count the votes contained in the boxes, and yet, in the latter part of it, declares

that they shall return the person having the greatest number of votes in the district, as the member duly elected, when it may happen that the ballots for the person who really has the greatest number of votes may, either through design or mistake, not be included in the boxes, thus rendering the different parts of the oath contradictory.

4. Because the ballots are to be returned by the *sheriff* or his *sufficient deputy*, without declaring whether by his *sufficient deputy* any other shall be intended than the known sworn deputy, or whether it shall be left to the discretion of the sheriff to appoint any man his deputy, or even rendering a written deputation necessary, so that the utmost latitude will be left for the commission of frauds, no person being authorized to determine the legality of such deputation.

5. Because no power is given to the canvassers or any other person under oath to determine whether the boxes have or have not been returned by the sheriff or his deputy (that part of the oath in the former election law which directs the canvassers to estimate the votes contained in the boxes *delivered by the sheriffs*, being in this bill omitted); so that in whatever manner the boxes may be delivered into the secretary's office, it becomes the duty of the canvassers to count them, in direct violation of all the provisions in the law against frauds in the transportation and delivery of the boxes.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

NEW YORK, *December 19, 1792.* Present—Governor Clinton; Livingston, Chancellor; Hobart and Lansing, Justices.

A bill entitled "*An act to amend an act entitled 'An act for establishing and opening lock navigations within this State,'*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

The Council object against the said bill becoming a law of this State, as inconsistent with the spirit of the Constitution and the public good.

1. Because the power intended to be vested in the presidents and directors may in its execution prove subversive of the rights of private property, by divesting the proprietor of his land in cases not indispensably necessary for the attainment of an object of public utility; the third enacting clause of the bill not only providing for the appropriation by the presidents and directors of the land on which any canal lock, dyke, embankment, pond, dam, or other work shall be constructed, but extending such appropriation one hundred feet on both sides of any such erections or works, and expressly declaring that the land so acquired may be applied to such uses as the presidents and directors shall think proper; thus wresting from an individual his property, in a manner only justifiable in cases of urgent public necessity, without imposing on the company to which his right is devolved as a duty, that it shall be sacredly applied only to the advancement of those interests of the company in which its private emolument is inseparably connected with the effectual promotion of the public good.

2. Because, previous to executing or even obtaining a writ of *ad quod damnum*, the bill authorizes the presidents and directors or their agents to enter upon, dig, trench and use the land of any citizen, without his permission; thus sanctioning a destruction of timber and improvements, before proper precautions have been taken to ascertain the amount of the injury sustained, and in many instances depriving the party affected by such proceedings of the most conclusive proof of the extent of that injury, arising from a relative comparison of the several parts of the land on which works are constructed, and those adjoining them, and a collective view of the state of the improvements rendered useless by the appropriations made by the presidents and directors.

Notwithstanding the objections, the Legislature passed the bill into a law.

December 24, 1792, Morgan Lewis was appointed one of the Justices of the Supreme Court.

ALBANY, *February* 27, 1793. Present—Governor Clinton; Livingston, Chancellor; Hobart and Lewis, Justices.

A bill entitled "*An act for vesting the lands appropriated for highways and streets in the city of New York, in the corporation of the said city,*" was before the Council, which adopted the following objections, reported by Justice Lewis, viz.:

The Council object against the said bill becoming a law, as inconsistent with the spirit of the Constitution and the public good.

1. Because the said bill, if passed into a law, will, in every case where an individual has laid out a street through his own ground, for his own private use, or for the use of the community, giving a general right of way therein, but reserving the right of soil in himself, arbitrarily vest such right of soil in said corporation, without the consent of the proprietor, and prevent his making any alterations therein, for increasing the value of his property, without any compensation to him for such loss and injury; although it is presumable, from the powers already vested in the said corporation by the act entitled "*An act for the better regulating the public roads in the city and county of New York,*" passed 21st March, 1787, the proviso contained in this bill, and the regard paid to the rights of individuals in all former road acts, that the Legislature intended to vest in the said corporation only the interest of the people of the State in the said highways and streets.

2. Because, wherever a public highway passes through the grounds of an individual, the right of soil in said highway is by the common law vested in such individual, he having a right to the trees, &c., growing thereon; which right is recognized by the act of the 4th of May, 1784, respecting public highways in certain counties of this State.

3. Because the said bill will, in some instances, vest in the said corporation lands which have been heretofore laid for highways or streets, and which have been afterwards inclosed and actually built on by the proprietors.

4. Because, should any highway or street laid out heretofore by an individual, through his own grounds, be wholly altered by said corporation by virtue of the powers contained in the said act of

the 21st of March, 1787, the lands over which such highway or street passed would not revert to the former proprietor, but remain in the said corporation, nor would he be benefited by a forfeiture for an application of such lands to uses different from those for which they were vested in said corporation.

The Senate refused to pass the bill; consequently it did not become a law.

January 29, 1794, Egbert Benson was appointed one of the Justices of the Supreme Court.

ALBANY, *February 21, 1794.* Present—Governor Clinton; Livingston, Chancellor; Yates, Chief Justice; Lansing and Lewis, Justices.

A bill entitled "*An act for the relief of Mathew Trotter,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

The Council object against the said bill becoming a law of this State, as inconsistent with the public good.

Because the act, by virtue of which the regiment of levies, commanded by Colonel Marinus Willett, was raised, does not warrant the recitals in the said bill contained. The appointment of the said Mathew Trotter, and his subsequent service as a Lieutenant and Quarter-Master in that regiment, for the term of eight months from the 1st day of April, 1783, not entitling him, in consequence of any existing law, to a bounty of lands, even had he received commissions in those several capacities; although a corps organized and commanded by Major Elias Van Buntschoten, consisting of troops raised and formed pursuant to an act entitled "*An act for raising two regiments for the defense of the State, on bounties of unappropriated lands,*" and of another act entitled "*An act for raising troops to complete the line of this State, in the service of the United States,*" and the two regiments, to be raised on bounties of unappropriated lands, was annexed to and formed part of the said regiment of levies; hence the bill, purporting to have for its object the reward of military service, in com-

pliance with a previous stipulation, appears to be founded in misapprehension, it containing a free gift of the property of the people of this State.

No warrant authorizing the said Mathew Trotter to enlist soldiers for either of the regiments directed to be raised on bounties of unappropriated lands appears to have been issued; and whatever may have been his merits or services, his situation in that respect is distinguishable as less entitled, on the ground of antecedent stipulation, to remuneration from that of many officers in the levies, appointed to recruit for those regiments, who may have exerted themselves to make the enlistments required, and who, in pursuit of that object, may have been subjected to considerable expense, but who, failing to procure the requisite number of men, were precluded from the benefits extended to the corps commanded by Major Van Buntschoten.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

ALBANY, *March 27, 1794.* Present—Governor Clinton; Yates, Chief Justice; Lansing, Justice.

A bill entitled "*An act further to amend an act entitled 'An act for the better laying out, regulating and keeping in repair all common and public highways and private roads in the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery,'*" was before the Council which adopted the following objections, viz.:

The Council object against the said bill becoming a law of this State, as inconsistent with the public good.

Because it is manifest from experience that alterations of roads and highways, after they have been rendered commodious at the public expense, are more frequently made to accommodate individuals through whose lands they run, than for the promotion of public convenience. By the second section of the existing law, which this bill is intended to amend, a salutary check is provided against an improper exercise of this power by the commissioners, in previously requiring a certificate, under the oath of twelve free-

holders, to warrant an alteration; but by this bill that power is vested solely in the commissioners, with the concurrence of the owners of the lands.

The Senate refused to pass the bill; consequently it did not become a law.

NEW YORK, *March 31, 1795.* Present—Governor Clinton; Lewis and Benson, Justices.

A bill entitled "*An act for the relief of certain persons claiming lands in the patents therein mentioned,*" was before the Council, which adopted the following objections, reported by Justice Benson, viz.:

Because, whenever a trust or power created by law hath been executed, the law then, in respect to rights consequent of such execution, becomes as unalterable and irrevocable as a grant of right, whether the grant be made immediately by the Legislature or by an agent entrusted or empowered by them; and the authority of the Legislature to annul or abridge a right is not less restrained, where the right is in virtue of a special law, than where it is in virtue of the general laws of the land, or the acts of parties; neither is it sufficient reason for the exercise of such authority that the law was passed in any manner *unadvisedly*. By the act "to ascertain the limits and boundaries between the patents of Kaya-derosseres, Half Moon and Clifton Park," passed the 11th March, 1793, the determination of the commissioners is to bind all claimants deriving title under those patents respectively, and the commissioners having executed this trust or power by making a determination, there is now a right in every claimant to conclude every other claimant from questioning the boundaries as determined by the commissioners; but by the bill, "the title of no person, whomsoever, claiming lands in the patents of Half Moon or Clifton Park, by lease or purchase, in fee simple, and who did not subscribe the agreements to petition, or the petitions to the Legislature for the act, shall be bound or in anyways affected by the determination of the commissioners," because, as it is recited in the bill, "no public notice was given by the petitioners that they would apply, or had applied to the Legislature for the act,

and for want of such notice the lessees and purchasers under the proprietors of Half Moon and Clifton Park, had not an opportunity afforded them to show cause why the prayer of the said petitioners should not be granted," so that the principles here advanced by the Council are properly and obviously applicable to the bill; they are relied on as just: and the Council do not discern it either as unwarrantable by the Constitution, or unsalutary in itself, to extend them even to a case where it might be charged against the persons, on whose prayer the law may have passed, that they have deceived the Legislature by false suggestions of the injury or damage of others.

Because the relief intended by the bill is *partial*, being confined only to persons claiming by *lease* or *purchase in fee simple*, whereas the reason for the interference of the Legislature, as assigned in the bill and already stated is *general*, and might with equal fitness and justice apply to all persons without discrimination, as to the mode of title by which they may claim.

Because the description of the persons intended to be relieved is defective, it not being to be collected from the bill, with due certainty, whether immediate lessees, or purchasers only, are intended, in exclusion of persons claiming as heirs or devisees, or as personal representatives to lessees for years; or whether the lessees or purchasers from *original* grantees, and the heirs, devisees, assigns and personal representatives of such lessees and purchasers, in exclusion of persons claiming under *original* grantees by title consisting throughout in descent or devise.

Because the bill, by leaving the determination of the commissioners still binding on some claimants, and being silent whether the determination shall bind these claimants as between themselves only, may operate so as not to accord with equality of justice between all claimants. This may be exemplified by supposing the determination to be in favor of a person who *had*, against a person who *had not*, "subscribed the agreements to petition, or the petitions to the Legislature for the act;" the former cannot avail himself of the determination against the latter, but if, in the converse of the case, the latter could avail himself of the determination against the former, it is evident that then the rule between these parties would not be equal.

Notwithstanding the objections, the Legislature passed the bill into a law.

CITY OF NEW YORK, *April 9, 1795.* Present—Governor Clinton; Yates, Chief Justice; Benson, Justice.

A bill entitled "*An act for the better support of the Oneida, Onondaga and Cayuga Indians, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, viz.:

Because, by concurrent resolutions of both houses of the Legislature of the 13th February, 1794, "his Excellency the Governor, was requested to confer with the Indians then in the city of Albany, and to give them the fullest assurances of the continued friendship of the State towards their brethren, the Six Nations, and that the Legislature will protect and secure them in the possession and enjoyment of their reservations according to the agreements made with their several nations, and were ready to make any further disposition thereof, for their sole benefit, whenever the wishes of their respective nations shall be made known for that purpose;" but by the bill the annuity to be stipulated by the agents to be paid by the people of this State, to the Oneida and Cayuga Indians, for the residue of the reservations not appropriated in the manner specified in the bill, "shall not exceed an annual interest of six per cent on the principal sum, which would arise from the sale of such residue, if the same were sold at four shillings per acre;" and the bill, after directing the Surveyor-General to lay out the tracts into lots for which such annuities shall be stipulated, and to sell the same, "provides that none of the said lots shall be sold for less than sixteen shillings per acre," and which the Council also presume to be not less than the value thereof, so that the *disposition* to which the agents are by the bill authorized will be a disposition, three-fourths of which, at least, will be for the benefit of the State, and consequently not a disposition for the *sole* benefit of the Indians. The restrictions, therefore, on the agents in respect to the amount of the annuities to be stipulated by them, is inconsistent with the assurances contained in the above

recited resolutions, and which, agreeably to the requests of both Houses were made to the Indians by his Excellency the Governor.

Notwithstanding the objections, the Legislature passed the bill into a law.

July 1st, 1795, John Jay succeeded George Clinton as Governor.

Feb. 5, 1796, the Secretary of State made Clerk of the Council.

CITY OF NEW YORK, *March 11, 1796.* Present—Governor Jay; Livingston, Chancellor; Lewis and Benson, Justices.

A bill entitled "*An act to authorize the raising moneys by tax in the city and county of New York for defraying the public expenses,*" was before the Council, which adopted the following objections, reported by the Chancellor, and amended by said Council, viz.:

Because the second enacting clause of the bill directs that the said several sums of money shall be rated and assessed according to the estate of each respective person so to be taxed, without affording any rule whereby the valuation thereof shall be made, or imposing any check on the discretionary exercise of this unbounded power.

Because the party taxed is left without remedy or redress against unjust or erroneous assessments, but is compelled to pay whatever sum the assessors shall direct, however exorbitant or oppressive.

The Council cannot forbear to consider a law which confers power for the misapplication or abuse of which the citizen suffering thereby can have no redress, as being inconsistent with the spirit of a free government and with the public good.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *February 10, 1797.* Present—Governor Jay; Yates, Chief Justice; Hobart, Lansing and Benson, Justices.

A bill entitled "*An act for raising a further sum of money for repairing the court-house and gaol in the county of Herkimer,*" was

before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

1. Because the mode of levying and raising the tax contemplated by the bill contains no rule or principle by which the assessors are directed to ascertain the value of the real and personal estates to be rated by them—affords no possible redress by a revision of the assessment, to the person injured, as the valuation is the mere expression of the opinion of the assessors, the accuracy or rectitude of which cannot be tested by resorting to any determinate object in restraint of a corrupt or erroneous exertion of the powers entrusted to them; thus subjecting the estates of free citizens to the arbitrary disposition of assessors, and thereby impairing and endangering the rights of private property, the preservation whereof is among the first objects of every social contract.

2. Because the mode so prescribed in the said bill has been discovered experimentally in many instances to operate partially, unequally and oppressively.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 31, 1797.* Present—Governor Jay; Yates, Chief Justice; Lansing and Benson, Justices.

A bill entitled "*An act enabling the mayor, recorder, aldermen and commonalty of the city of Hudson to order the raising money for the payment of a night watch,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

Because the bill purports to authorize and empower the mayor, recorder, aldermen and commonalty of the city of Hudson, in common council convened, to order the raising a sum of money annually by tax on the real and personal estates of the freeholders and inhabitants within the limits therein described, without prescribing the mode of assessing, levying or collecting it; which is the more necessary as the act establishing the present imperfect

system of taxation does not comprehend a case of this description.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *April 1, 1797.* Present—Governor Jay; Yates, Chief Justice; Lansing and Benson, Justices.

A bill entitled "*An act to enable St. John Honeywood to continue an attorney in certain causes,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because the said St. John Honeywood, at the time of his appointment and acceptance of the office of clerk of the county of Washington, was apprised that by a law of this State he was inhibited from practising as an attorney in any courts of which he was appointed clerk; and that he, by such his acceptance, made his choice, and thereby relinquished his right of practising at the bar of those courts.

Counselors and attorneys may, as vacancies arise, be frequently appointed clerks of courts. Should, therefore, this bill become a law, a precedent will be established in similar cases to encourage a suspension of the good and beneficial effects of a law made for the wise purposes of guarding against the temptation and danger of unfair practice.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *April 3, 1797.* Present—Governor Jay; Yates, Chief Justice; Lansing and Benson, Justices.

A bill entitled "*An act authorizing the mayor, aldermen and commonalty of the city of Albany to raise a sum of money by tax, for defraying the expense of lighting the lamps and for the support of a night watch,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

Because, independent of the reasons which have been on former occasions offered by the Council against the system of taxation referred to in the said bill, and which it would now be unseasonable to repeat, the proviso in the said bill contained that in forming the assessment, "regard shall be had to the greater or less advantage which may result to individuals from such lamps and night watch," gives a great additional latitude and new objects to the discretion of assessors.

Because, although the publication of accounts of the disposition of moneys granted by *law* may produce salutary effects as affording a means for the detection of any misapplication, and tending to increase a proper caution in the persons entrusted with the management thereof, yet the compelling this corporation to publish an account, not only of the receipts and expenditures of the funds derived from the grant intended to be made by the bill, but also of their own proper income, subjects the mayor, aldermen and commonalty of the city of Albany to a duty not imposed on other corporations in the State, the more exceptionable as it is not founded on any imputation of misconduct in the officers of that corporation.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 2, 1798.* Present—Governor Jay; Yates, Chief Justice; Hobart, Lansing and Benson, Justices.

A bill entitled "*An act to vest certain powers in the freeholders and inhabitants of the villages of Troy and Lansingburgh, and for other purposes therein mentioned,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

Because the proportion according to which the taxes provided by the bill to be raised within the several villages of Lansingburgh and Troy are to be assessed on the freeholders and inhabitants, is to be their respective relative property or ability; and those terms, *property* and *ability*, being of too various and indefinite import to designate or describe with due certainty the things, considerations;

or other matters, for which a person is to be assessed or taxed, the proportion supposed by the bill must remain equally uncertain, and the assessors, in apportioning the tax among the several persons by whom it is to be borne, will in effect be left to their absolute discretion, for want of a rule to guide or control them, and may even suppose themselves authorized to assess a greater portion or quota on a person, in consideration of a property in lands not within the limits of the village, and no means to detect or correct the abuse. It therefore appears improper to the Council that a bill so defective in a part so material should become a law.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *January 2, 1798.* Present—Governor Jay; Yates, Chief Justice; Hobart, Lansing and Benson, Justices.

A bill entitled "*An act further to amend the act entitled 'An act to organize the militia of this State,'*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

Because the clause in the bill which authorizes any forty of the enrolled and ununiformed militia of a regiment to form themselves, by voluntary association, with the approbation of the commanding officer of the brigade, into a company, will probably tend to introduce and perpetuate dissensions in regiments, promote disorganization and subvert subordination.

Because the bill contemplates the forming additional companies in regiments already divided into beats, and authorizes the commanding officer of the regiment to assign the officers to such additional companies from those of the regiment; thus not authorizing the commanding officers of regiments to exact from the officers so assigned additional duties, *ex officio*, but by devolving upon them a right of making permanent appointments which virtually avoid those made in the mode pointed out by the Constitution, causing vacancies in the several beats from which the officers so assigned are taken, which vacancies must of necessity, for the purpose of preserving the organization prescribed by the existing militia law, be filled in the usual constitutional mode.

Because the general policy of military arrangements, combined with the consideration that it is a power vested by the existing militia law, requires that all the subordinate commands should be ascertained and controlled by the commander-in-chief, who, from his situation and means of acquiring information respecting the expediency of such arrangements, is more competent to direct them.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 26, 1798.* Present—Governor Jay; Livingston, Chancellor; Yates, Chief Justice; Lansing, Lewis and Benson, Justices.

A bill entitled "*An act for the relief of Anna Breadbake,*" was before the Council, which adopted the following objections, reported by Justice Lansing, viz.:

Because the grant intended by the bill is not founded on that official inquiry which has been devised for the wise purposes of preventing oppression on the citizen and imposition in directing public benevolence, and contains neither a description of the value, extent or duration of the estate alleged to have escheated to the people of this State; thus establishing a precedent which, in process of time, may become dangerous in practice to the interests of the community.

Because the grant is not limited to the estate whereof John Breadbake died seized or possessed; thus affording color for a construction repugnant to that salutary principle of the common law, *that a mere right is incapable of being transferred by grant.*

Because the bill purports to grant all the right and title of the said people of, in and *to all the estate of the said John Breadbake* to Ann, his widow, her heirs, and assigns forever, though it does not appear from the said bill that the said John Breadbake held any estate of inheritance; thus rendering the said grant uncertain as to its object, and perhaps discordant in its application to the estate which is the subject matter of the said bill.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

ALBANY, *February 2, 1798.* Present—Governor Jay; Livingston, Chancellor; Yates, Chief Justice; Benson, Justice.

A bill entitled "*An act authorizing the use of paper instead of parchment in certain legal proceedings,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because a practice sanctioned by the usage of ages furnishes such a presumption in its favor as to render any change improper except on the most obvious utility, and it does not appear that any advantage to the public will result or is expected from the change in question.

2. Because, unless parchment should, contrary to long and general opinion and experience, be deemed a more proper material for records than paper, the change on that principle cannot be necessary, and the expediency of it is rendered at least very doubtful by the consideration that parchment, to a considerable and increasing amount, is manufactured in the country, and value thereof given to a raw material otherwise of little worth.

Notwithstanding the objections, the Legislature passed the bill into a law.

February 15, 1798, John Lansing, Jr., succeeded Yates as Chief Justice. In that month James Kent was appointed a justice in place of Lansing. On the ninth of August following, John Cozine was also appointed a Justice in place of Hobart, resigned; and on the twenty-seventh of the succeeding December, Jacob Radcliff was appointed in place of Cozine, deceased.

ALBANY, *March 23, 1798.* Present—Governor Jay; Lansing, Chief Justice; Lewis and Benson, Justices.

A bill entitled, "*An act repealing an act entitled 'An act for granting and securing to John Fitch the sole right and advantage of making*

and employing the steamboat by him lately invented, and for other purposes," was before the Council, which adopted the following objections, reported by Justice Benson, viz.:

Because the grant of the privileges to Robert R. Livingston, intended by the bill, supposes that the similar privileges which were granted to John Fitch, by the act thereby to be repealed, had become forfeited, whereas it doth not appear that the facts from which such forfeiture is to arise have been found in some due course of law.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 30, 1798.* Present—Governor Jay; Lansing, Chief Justice; Lewis and Benson, Justices.

A bill entitled, "*An act to amend the act entitled 'An act for suppressing immorality,'*" was before the Council, which adopted the following objections, reported by Justice Benson, viz.:

Because it enacts "that no conviction or adjudication which shall hereafter be had under it, shall be liable to be removed by certiorari into the Supreme Court, but shall be deemed and taken to be final, to all intents and purposes whatever;" thereby, in respect to such convictions or adjudications, causing that transcendent power of the Supreme Court which hath always been considered as inherent in it and as indispensable for preserving order and restraining and preventing usurpation and oppression, "the power to keep all inferior jurisdictions within the bounds of their authority" to cease; and although in merely regulating the right of appeal, mischiefs, even inconsiderable or remote, may be admitted as meriting notice and estimation, yet that it ought not, without the most clear and urgent reasons of necessity, to be wholly taken away in any case or be restricted from being pursued to that court in the last resort.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, April 2, 1798. Present—Governor Jay; Lansing, Chief Justice; Lewis and Benson, Justices.

The following bills, viz.: "*An act for raising money to finish and repair the court-house and gaol in Queens county*;" "*An act to authorize the raising a sum of money for making certain necessary accommodations for the gaol and certain repairs for the court-house in the county of Rensselaer*;" "*An act to raise a sum of money for building a court-house and gaol in Delaware county, and for other purposes therein mentioned*," and "*An act for building a court-house and gaol in the county of Schoharie*," were before the Council, which adopted certain objections, reported by the Chief Justice, as applicable to each, viz.:

The Council find themselves constrained by the same reasons and principles, which on various preceding occasions compelled them to object to former tax bills, to consider it as improper that the following bills should become laws of this State, to wit: The bill entitled "*An act to raise a sum of money to finish and repair the court-house and gaol in Queen's county*;" the bill entitled "*An act to authorize the raising a sum of money for making certain necessary accommodations for the gaol, and certain repairs for the court-house in the county of Rensselaer*;" the bill entitled "*An act to raise a sum of money for building a court-house and gaol in Delaware county, and for other purposes therein mentioned*," and the bill entitled "*An act for building a court-house and gaol in the county of Schoharie*;" being convinced that the spirit of our Constitution, and of every free government, demands that the citizen should be taxed by fixed rules and not at the discretion of any individual; they think it their duty to reiterate their former objections.

Notwithstanding the objections, the Legislature passed the several bills into laws.

ALBANY, April 2, 1799. Present—Governor Jay; Livingston, Chancellor; Lansing, Chief Justice; Benson, Justice.

A bill entitled "*An act to amend the statute of limitations*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the statute of limitations, as it now stands, affords the State sufficient security for its rights, since even after the year 1800, its claims may be prosecuted if they have arisen within forty years prior to such prosecution, and because a prosecution after a longer period, when the estate has probably passed into the hands of bona fide purchasers, and been improved at their expense and by their labor, will always be odious and generally unjust and oppressive.

2. Because the law operates as an assurance on the part of the State that it will, at a certain period, relinquish its claims to the possessors of lands, and therefore should be held sacred and inviolate.

3. Because the bill goes to render every limitation of time, so far as it respects the State, illusory; for if it is expedient now to extend the term for four years, no man can confide that before that period elapses it may not be again deemed expedient to extend it.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

ALBANY, *March* 19, 1800. Present—Governor Jay; Lansing, Chief Justice; Lewis, Benson, Kent and Radcliff, Justices.

A bill entitled "*An act giving certain powers to the magistrates of this State in relation to seamen in foreign service,*" was before the Council, which adopted the following objections, reported by Justice Radcliff, viz.:

Because the right to legislate in this case belongs to the Government of the United States, and it appertains to them to remove any doubts or supply any defects which may be supposed in their statute on this subject.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 8, 1800. Present—Governor Jay; Livingston, Chancellor; Benson and Kent, Justices.

A bill entitled "*An act for the payment of certain officers of government, and for other purposes*," was before the Council, which adopted the following objections, reported by Justice Kent, viz.:

Because the allowance thereby granted to the Chancellor and Judges of the Supreme Court, in addition to their permanent salaries, is temporary only. Notwithstanding the fluctuations in the legislative provision for the salaries of those officers, and however embarrassing and impressive may have been the circumstances which have caused the temporary changes alluded to, yet the Council find it to be their duty to remind the Legislature of those principles of the Constitution, and those great maxims relative to the independence of the judiciary department, which general experience has proved to be essential to the public good.

The Council are sensible that it is a matter entirely of legislative discretion to determine and fix the adequate compensation to the Chancellor and Judges, but when the Legislature has exercised its discretion and ascertained the compensation, the reason of the Constitution then applies, and requires such compensation to be permanently established, by ordaining that the Chancellor and Judges should hold their offices during good behavior. The Constitution evidently intended to make them independent, but that intention will be greatly frustrated and the tenure of their offices essentially affected, if they are to depend, either in the whole or in part, for their necessary support upon the annual pleasure of a single branch of the Legislature.

Whatever compensation, therefore, in addition to that allowed by the act of the 11th April, 1792, is deemed requisite (and the bill is itself evidence of the sense of the Legislature, that the allowance in that act is incompetent), ought to be equally permanent, as being equally within the reason of that law.

It is proper that those persons who may from time to time be called to renounce the lucrative pursuits of private business, and to devote the best part of their lives exclusively to the public service, may know, with reasonable certainty, upon what to depend; their requisite independence, as intended by the Constitu-

tion, can only result from a permanent provision for their support, and from a permanent tenure in their offices.

The bill, therefore, by determining what the compensation to the Chancellor and Judges ought to be, and by making the same temporary only, is inconsistent with the spirit of the Constitution as well as with the obvious dictates of the public good.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *February 27, 1801.* Present—Governor Jay; Lansing, Chief Justice; Benson, Justice.

A bill entitled "*An act for establishing and regulating a ferry across the Hudson river, between the town of Mount Pleasant, in the county of Westchester, and Clarkstown, in the county of Rockland,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because the bill purports to grant the ferriage exclusively within certain limits on the Hudson river, in restraint of the rights of persons who may hold lands within such limits, of using the waters of a navigable river; and it does not appear that the usual notifications preceding the bringing in bills, by which private rights may be affected, have been published in this instance; and for aught appears to the contrary, this bill, if passed into a law, in its operation may prejudice claims to a like exclusive right to some portion of the shores of the Hudson river, comprised in the limits described in the bill.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

ALBANY, *March 30, 1801.* Present—Governor Jay; Lansing, Chief Justice; Lewis and Radcliff, Justices.

A bill entitled "*An act authorizing John Marshall and Gilbert Brown to erect a mill-dam and grist-mills across and upon Mill creek, in the town of Rye, and county of Westchester, and to enable certain*

persons interested in lands contiguous thereto, to assent to the same," was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because the bill purports to vest a power in trustees to dispose of the real estate of the minors named in it, in fee, either as a mere accommodation to others, or with intent to promote the interests of those minors, which, in either alternative, is repugnant to the salutary policy of the law restraining infants from alienating their real estates, and which ought to render their consent to an alienation by trustees equally unavailing.

Because it is of much greater importance to the public that the estates of infants should be preserved unimpaired, than that speculative or even solid advantages should be obtained for some of them, at the expense of endangering the uniform operation of a rule, the strict observance of which is so well calculated to inspire the confidence of parents that the estate they transmit by inheritance or devise to their infant children are protected from being divested by the fraud or indiscretion of those to whose care their interests are intrusted during their minority; but the interference of the Legislature for purposes of that kind are the more dangerous, as the real intent may be so masked as to render it impracticable to discriminate between the ostensible and latent motives which prompted an application for their interposition.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March* 31, 1801. Present—Governor Jay; Lansing, Chief Justice; Lewis, Benson and Radcliff, Justices.

A bill entitled "*An act concerning the proof of deeds and conveyances,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because its provisions are calculated to weaken the security of titles to real estates, by vesting a power to take proofs and acknowledgments of the execution of conveyances in a number of offices,

dispersed not only through every county of this State, but through the whole extent of the United States, whose signatures and official characters must, of necessity, in many instances, be totally unknown to the recording officers; and hence put it entirely out of their power to distinguish forged from genuine certificates of such proofs or acknowledgments.

Because, as forgeries committed out of the State are not offenses punishable by its laws, the perpetrators of acts of that kind may perfect them by proof or acknowledgment, without being obliged to expose themselves to be apprehended and punished within it, in case of detection; and thus the principal agents in the commission of forgeries may escape with impunity.

Because the judicial officers of the other States are not punishable for mal or corrupt conduct in the execution of this trust, nor can they be compelled, by legal process, to appear in the courts of this State for the purpose of disproving any act falsely imputed to them; which will, in a great measure, render the recording of conveyances, although they should be forged, under certain circumstances, decisive as the destruction or concealment of those conveyances leave the records thereof to be used as evidence of their having existed, and may preclude the possibility of an inspection of the original, and the circumstances derived from that source which frequently expose forgeries to effectual detection. This objection also extends, in a degree, to the judges of the Supreme Court of the United States, although all recording and other officers of the State, are bound to take notice of their appointments, but from the smallness of their number and the notoriety of their public characters, such extensive evils are not to be apprehended, although it would be more consistent with the precautions devised in suppression of fraud, in other parts of the bill, to oblige all grantors residing in the United States to have their conveyances proved or acknowledged within this State, before the same should be permitted to be entered of record.

Because the prohibition to record deeds, other than such as have been proved or acknowledged in the mode prescribed by the bill, is liable to doubts whether it does not render all the proofs or acknowledgments of deeds taken prior to the 1st day of May, 1797, and not actually recorded nugatory and of consequence,

incapable of being used in evidence merely on the credit of such proofs or acknowledgments, as well as divesting the persons entitled to the estates conveyed by such deeds, of a right they had acquired under the then existing laws, of having them entered on the records; an operation the more injurious to persons holding under such conveyances, as it leaves them destitute of the evidence on which they have long depended in that security, which a consciousness of having perfected their conveyances, in the mode required by law, could not fail to inspire, and which evidence they may now be unable to replace, in consequence of lapse of time and the death or absence of the parties and witnesses.

Because it necessarily makes it the duty of the recording officers to decide on the authenticity of a certificate, purporting that a deed had been duly proved before the mayor of the city of London, and that without any means derived, either from the annexation of the city seal or otherwise, of knowing or ascertaining his handwriting; and

Because the more the number of the officers to prove deeds is increased, the more facility to forgery will be given, and the more will the means of detecting and checking that dangerous and prevailing offense be diminished.

As the foregoing objections apply to the bill entitled "An act concerning mortgages," the Council object to the same for the like reasons.

The Assembly refused to pass the bill entitled "An act concerning the proof of deeds and conveyances," and also the bill entitled "An act concerning mortgages;" consequently neither of the said bills became laws.

ALBANY, April 7, 1801. Present—Governor Jay; Lansing, Chief Justice; Lewis and Radcliff, Justices.

A bill entitled "*An act authorizing Masters in Chancery to appoint guardians for infants,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz:

Because, although the attainment of the principal object of the bill is calculated to promote the public convenience, it is not suffi-

ciently provisional; the bonds directed to be given by the guardians for the faithful discharge of their duty, are not ordered to be filed in any permanent public office for safe keeping, but remaining in the hands of the masters as a mere official personal trust, will be carried with them to whatever place they may remove within this State, and in case of their migration from, and death out of, this State, these bonds and other papers would pass into the hands of their executors and administrators, for whose care and fidelity there cannot be adequate security, and who may be in situations not conveniently accessible to the parties, nor within the jurisdiction of our courts.

Because the reference to analogous cases for the purpose of ascertaining the masters' fees, is too vague to afford a definite rule to prevent embarrassments to the masters, and protect the citizens applying for their interposition from oppressive exactions.

The Senate refused to pass the bill; consequently it did not become a law.

July 1st, 1801, George Clinton succeeded Jay as Governor, October 28, 1801, Morgan Lewis succeeded, as Chief Justice, Lansing, who, on the 21st, had been appointed Chancellor in place of Livingston, resigned. On the 8th of January, 1802, Brockholst Livingston was appointed a Justice in place of Lewis, and Smith Thompson in place of Benson.

ALBANY, *April 3, 1802.* Present—Governor Clinton; Lansing, Chancellor; Lewis, Chief Justice; Kent and Radcliff, Justices.

A bill entitled "*An act declaring certain waters in the counties of Steuben and Chenango to be public highways, and repealing part of the act entitled 'An act to regulate highways,'*" was before the Council, which adopted the following objections, reported by Justice Radcliff, viz.:

Because the said bill declares that certain waters and streams within the county of Steuben shall become public highways, when the lands under the said waters and streams have already been

ceded by this State to the Commonwealth of Massachusetts, without any reservation, and become the private property of individuals; and the said bill does not provide any compensation or equivalent to the persons whose rights would be thereby affected: and because it is inconsistent with the spirit of the Constitution, and against the public good that any citizen should be deprived of his property for public purposes, without a just equivalent or compensation therefor.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *March 26, 1808.* Present—Governor Clinton; Lansing, Chancellor; Kent and Radcliff, Justices.

A bill entitled "*An act to amend an act entitled 'An act concerning the recovery of debts and demands, to the value of ten pounds, in the city of New York,' passed the 16th of February, 1797,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, although the first section of the said bill purports to authorize the appointment of five additional justices, and to empower them individually to hold a court in their respective wards; to issue process; to hear, try and determine all actions *which the justices mentioned in the thereby intended to be amended act, might or could do; to issue executions, and to hold and exercise all the power and authority which said justices, or any two of them, are by the said act authorized to exercise,* the bill is entirely unprovisional as to the mode in which some of the essential powers of a court are to be exercised; for the present justices are directed to grant process under a seal to be devised by them, and through the agency of a clerk to be appointed by them, whose duty it is "to docket or register all summonses, warrants and executions," and to make "proper entries of all acts, orders, dismissions, decrees, judgments, adjournments and proceedings of the said court, and the substance of the plaintiff's charge or demand, and the defendant's plea; to make indorsements on executions, receive all fees," and pay them to the justices; and which registers are, by the

eighteenth section of the said act, made legal evidence of the acts and proceedings of the said court. Hence, if the clerk of the present court is intended also to be the clerk of the additional justices, it would impose upon him the impracticable duty of attending six different courts sitting at the same time and at different places; but if a right could be deduced by implication, as existing in each of the said justices, to devise a seal and appoint a clerk for his peculiar court, it would be totally inconsistent with other parts of the bill, as the fees for all the services to be performed by the clerk under the existing law, so far forth as respects the courts of the additional justices, are abolished, and of consequence, no reasonable inducement exists to their performance.

Because, although justices generally exercise concurrent jurisdiction coextensive with the counties for which they are appointed, such power vested in the additional justices, might lead to vex and oppress the inhabitants of the city of New York, living in the compact parts thereof, as the plaintiff must of necessity exercise the right of electing the court, and the defendants may thus be compelled to pass several of the other tribunals at their doors, and to attend at places inconvenient and remote with their witnesses; an inconvenience which will be occasionally felt by all, but in a greater degree by the inhabitants in the southern parts of the said city.

Because, by the said bill, it is intended to repeal the seventeenth section of the act first above mentioned, whereby the justices of the present court in the said city would be deprived of a great part of the compensation now allowed them for their services; and also that by the said bill, new justices are directed to be appointed in the fourth, fifth, seventh, eighth and ninth wards of the said city, invested with equal and concurrent jurisdiction throughout the said city, with the present justices' court, in all the cases mentioned in the said act; and it is provided by the said bill that each of the said justices in the said wards shall be entitled to receive fees equal in amount to those which the two justices required to hold the present court, would be entitled to receive for the same services, whereby the compensation of the several justices of the present court would be still further diminished and reduced below the

compensation allowed to the several justices to be appointed in the said wards, when at the same time the justices of the present court are invested with superior powers, and an unlimited jurisdiction in certain cases in which the justices in the said wards would have no jurisdiction.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, April 5, 1803. Present—Governor Clinton; Lansing, Chancellor; Kent, Justice.

A bill entitled "*An act for granting and securing to Philo Norton the sole right and advantage of erecting and employing, for a limited time, machines for carding wool and spinning flax and hemp within certain counties within this State,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because it purports to vest in Philo Norton "the sole and exclusive right and privilege of erecting, using and employing machines for carding and spinning wool and spinning flax and hemp" in the counties therein mentioned, without a particular reference to the specification of the machinery described in its preamble; thus restraining the exertions of ingenuity and circumscribing the efforts of industry, objects which peculiarly merit public patronage.

The Senate refused to pass the bill; consequently it did not become a law.

February 3, 1804, Ambrose Spencer was appointed a Justice in place of Jacob Radcliff, resigned.

ALBANY, April 4, 1804. Present—Governor Clinton; Lewis, Chief Justice; Kent, Livingston, Thompson and Spencer, Justices.

A bill entitled "*An act relative to the election of charter officers in the city of New York,*" was before the Council, which adopted the following objections, reported by Justice Kent, viz.:

Because the bill contains important alterations in the charter of the said city; and it not appearing in the bill, by recital or otherwise, that the same were made upon the application or with the consent of the parties interested, it is to be intended that they are made without such application or consent; and although it be granted that such an interference would be justified by some strong public necessity, it is not to be presumed by the Council that any such necessity exists in the present case, as none are recited in the bill or appear from the provisions in it; and it has been considered as a settled and salutary principle in our government, that in all cases where the ordinary process of law affords a competent remedy, charters of incorporation containing grants of personal and municipal privileges were not to be essentially affected without the consent of the parties concerned.

Notwithstanding the objections, the Legislature passed the bill into a law.

July 1st, 1804, Morgan Lewis succeeded George Clinton as Governor; on the second, James Kent succeeded Lewis as Chief Justice; and on the same day Daniel D. Tompkins succeeded Kent as Justice.

ALBANY, November 6, 1804. Present—Governor Lewis; Lansing, Chancellor; and Spencer, Justice.

A bill entitled "*An act concerning libels*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because the bill, making no discrimination with respect to the nature, tendency or intent of the libel, is calculated to subject men in, or candidates for, office to wanton and useless obloquy to have their mental foibles or corporal infirmities exposed, distorted and exaggerated, although such foibles or infirmities may neither detract from the integrity of their moral or political characters, from the rectitude of their official conduct, or from their ability to discharge the duties of the places they fill or are candidates for, beyond which the public cannot have any essential

interest that can possibly be promoted by the publication described in the bill; thus leaving the feelings of private citizens sheltered by the salutary restraints of the existing laws, and abandoning those of the public functionaries to the merciless laceration of malice and revenge, and permitting factious, turbulent or discontented individuals to awe and humble the spirit of officers disposed to discharge their duty faithfully, and whose independence and respectability it is of the utmost importance to the community effectually to preserve, holding them only responsible for the legitimate exercise of the powers entrusted to them for the public good.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, February 25, 1805. Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Spencer, Justice.

A bill entitled "*An act to enable the rector, church wardens and vestrymen of St. Ann's church of the town of Brooklyn to sell their parsonage house and lots of ground thereto appertaining, for the purposes therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the bill contains no intimation whence the disability of the rector, church wardens and vestrymen therein described, to sell and convey the property they are supposed to hold originates; thus leaving it to operate in affirmance of any estate they may assume to grant or in avoidance of any legal restraints which may have been imposed on an absolute alienation.
2. Because, although from the provisions of the bill it is to be inferred that the said rector, church wardens and vestrymen therein described are incorporated, it does not appear that application has been made by them under their common seal for the alteration of corporate rights which may be vested in them.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *March 21, 1805.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Spencer and Thompson, Justices.

A bill entitled "*An act for the relief of Nathaniel Shaler and others,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because, the bill not only enables Nathaniel Shaler, therein named, to complete the contracts of sale which he had made prior to the death of William Constable, by virtue of a power of attorney from him, but to proceed under the said power and sell the residue of the lands therein specified and which are stated in the bill to belong to William Constable, son of the said William Constable, deceased, and who is now an infant under the age of twenty-one years; thereby absolutely disposing of the real estate of the said minor, contrary to the just rights of property and the general principles of law.

2. Because, if it be deemed necessary that the real estate of the said minor should be sold, it ought, at least, to be done under the direction and at the discretion of the Court of Chancery, so that the respective interests of all parties concerned might be duly examined, adjusted and secured.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *March 30, 1805.* Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to incorporate the trustees of the marine hospital in the city of New York,*" was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because the said bill having for its object the incorporation of certain persons therein named holding offices in this State, and their successors in office, for the purpose of carrying into effect the intentions of Robert Richard Randall, deceased, and who, as it appears by the recitals of the said bill, by his last will and testament, devised and bequeathed the residuum of his estate to the said persons intended to be incorporated in trust to receive the rents, issues and profits thereof, and to apply the same to building on

some eligible part of the land whereon the testator resided at the time of his decease, an asylum or marine hospital to be called "The Sailor's Snug Harbor," and there being no provisions in the said bill for continuing the description of the said hospital, pursuant to the wishes of the testator, his said will in that respect is needlessly defeated.

2. Because, it appears by the recitals to the said bill that the rents, issues and profits of the testator's estate were, by the said will, to be appropriated for the purpose of maintaining and supporting aged, decrepid and worn-out sailors, as soon as the said trustees, or a majority of them, should judge the said proceeds would support fifty of such sailors and upwards; yet, without any suggestion that the said proceeds of the testator's estate will not be sufficient in a short period to effectuate the objects of his charity, the third section of the said bill authorizes the said trustees to apply the said proceeds for the purposes expressed in the said will as soon as they shall deem it expedient so to do, although the funds arising from the said estate may not be adequate to the support of fifty sailors; and thus the said will of the testator is defeated in an essential part thereof, contrary to the received axiom that he whose right it is to give, has a right to modify his gift as he sees fit. If the will of the deceased is thus controlled and altered by the Legislature, it must be obvious that persons disposed to bestow their estates for laudable and charitable purposes, under limitations and plans of their own devising, will be prevented by the example of the present bill, should the same become a law: and thereby will be destroyed incentives the most powerful and operative to the extension of charity and the alleviation of the sufferings of humanity.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 28, 1806. Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act supplementary to the act entitled 'An act declaring the crimes punishable with death or with imprisonment in the*

State Prison, and for other purposes," was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because the second section directs the punishment of certain classes of convicts with death and dissection, for a mere escape unattended with personal injury or violence to any individual; thus subjected an effort, prompted by the love of liberty, and which furnishes no evidence of moral turpitude or incorrigible depravity, to the most terrific sanction found in the criminal code of this State; applying the maximum of punishment to an offense much inferior in atrocity to that for which the imprisonment was originally incurred, and destroying the relative proportion between crime and punishment, by blending in an indiscriminate class the convict who merely attempts to elude the justice of the law, and the murderer whose malignity the safety of the community may require should be pronounced unworthy to live.

2. Because the fourth section does not distinguish between the setting fire to a dwelling-house, by which life as well as property may be endangered, and the burning an out-house only; and yet a variety of circumstances unavoidably occurring may create a great disparity in the crimes.

3. Because the punishment of death, authorized by the said fourth section, could not fail of being unfavorable to the conviction of real offenders, experience having evinced that when the punishment is disproportioned to the offense, or extends to the deprivation of life, sympathy has a powerful effect, not only on the minds of the triors, but also on the public at large: in this point of view this provision defeats itself.

4. Because, by the fifth section of the bill, the punishment of whipping is authorized for petit larcenies, a mode of punishment extirpating a future sense of shame, and eminently calculated to render the offenders obdurate and incorrigible, to the great hazard of public peace and good order.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 28, 1806.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act relative to dower in certain cases therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because it enacts that no widow, whose husband being now alive and who was convicted and attainted by or under the act therein mentioned, and which act was passed on the 22d day of October, 1779, shall be endowed of any lands whereof her husband was seized at the time of such conviction or at any time before. This provision takes away a right or title which, by the law of the land, the wife acquired at the time of her marriage, and which continues indefeasible unless she be divested of it by her own act or consent. To take away that right by an act of the Legislature, even before it be consummated by the death of the husband, is to take away a legal right already attached and vested. The bill is therefore a violation of the rights of property, and contrary to the spirit of the Constitution.

2. Because the bill applies only to the widows of certain persons who were objects of prosecution and punishment during our Revolutionary war, and creates a new rule of property, without making it impartial in its object and general in its application. If those widows are selected as peculiar objects of the bill by reason of any crimes of which their husbands were convicted under the act aforesaid, the bill is unjust because it is retrospective in its nature, and creates disabilities arising from crimes after they have been once tried and punished; and it is unlawful because it is contrary to the Constitution of the United States, which prohibits the passing of any *ex post facto* law, and because it inflicts new punishment for acts committed during the late war, contrary to the spirit and letter of the treaty of peace.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *January 28, 1806.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act authorizing Zilpha Smith to convey by deed the title to certain lots of land,*" was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because it is reasonably to be intended, although the bill is silent as to the facts which induced legislative interposition, that by reason of the descent to infants, there have arisen embarrassments in conveying a legal title to the lands contracted to be sold by Cornelius Chatfield, deceased; notwithstanding which, there is no manner of provision in relation to the consideration money for which the said lands were contracted to be sold; nor does it appear that the rights of the infants have in any manner been adverted to, particularly as regards the omission in the bill to require security to be given by the said Zilpha Smith, faithfully to execute the authority vested in her.

2. Because it appears by the said bill that the contract intended to be carried into effect was made between the said Cornelius Chatfield, deceased, and Nahum Daniels, Nathan Smith, Roswell Buell, Benjamin Stephens and Zena Stephens; and the said bill authorizes the widow of the said Chatfield to execute a conveyance to William and Samuel Smith, without its appearing in the bill that they have acquired a right to exact a performance of the contract.

3. Because, in all cases where there is a remedy in a Court of Equity to compel the specific performance of a contract, legislative aid ought not to be interposed, but under very special and peculiar circumstances, clearly stated in the bill, and then only it ought to be afforded under the direction and with the approbation of that court, possessing the jurisdiction to afford relief, to the end that the rights of individuals may not be affected by special acts, of the passage of which they may have had no notice, nor be competent to oppose.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *January 28, 1806.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act for the relief of Mary Reynolds, administratrix of Andrew Reynolds, deceased,*" was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because it is manifest from the provision, in the bill, that Mary Reynolds, who is thereby authorized to convey the land therein mentioned, is not seized thereof, but that the same hath been devised or descended to other persons, who, for anything appearing in the said bill, may be of legal capacity to execute the conveyance therefor. If the heirs or devisees are not in law competent thereto, then there is a want of provision in protecting and guarding the rights of persons laboring under disabilities, particularly as regards the omission in the bill to require security to be given by the said Mary Reynolds, to execute the authority vested in her faithfully, and to account for the moneys to be received by her.

2. Because, in all cases where there is a remedy in a Court of Equity to compel the specific performance of a contract, legislative interposition ought to be had only under very special and peculiar circumstances, clearly stated, and then only under the direction of that court, originally possessed of jurisdiction, to the end that the rights of third persons may not be impaired, as it appears by the present bill they might.

3. Because, by the third section of the said bill, provision is made for the payment of a debt due to William Cockburn, thereby giving him a preference to other creditors, which it does not appear he legally possesses.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 28, 1806.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act for incorporating the Newburgh Aqueduct Association, and for other purposes,*" was before the Council, which

adopted the following objections, reported by the Chief Justice, viz.:

1. Because, by the fourth section of the bill, the corporation are authorized to enter upon any lands they may deem necessary, and to appropriate the same, together with any fountain or stream of water, and the mills thereon, and to raise such dykes and reservoirs as they shall deem fit for the purpose of procuring and conducting water to the said village of Newburgh; and to agree with the owners of such lands and mills respecting a compensation for the same; and in case of disagreement, another mode of ascertaining the said damages is pointed out; and upon tender of payment, the said corporation are to be deemed seized of all such lands, streams and mills, which they shall have taken possession of for the purposes aforesaid. The power hereby conveyed is unlimited, and the object of the bill does not appear to be of such great public utility as to render the grant of it expedient. To deprive individuals, without their consent, not only of their lands, but of the buildings and other valuable improvements thereon, can be justified only on the principle of some important public object.

2. Because, admitting the object to be attained would justify the grant of the power, the provision in the fourth section for ascertaining the damages is nugatory and incapable of execution, and consequently would defeat the object of the bill. It states that if the parties cannot agree upon the amount of the damages, or in case the owner be a *feme covert*, under age, *non compos*, or out of the State, then each party is to choose a disinterested person for the purpose, and a judge of the Court of Common Pleas, to be selected by the parties, is to choose the third arbitrator. This provision need only be stated to show it incapable of execution, and there is no other provision in the bill by which it can be supplied.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 2, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act relative to certain crimes therein mentioned*," was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because, by the second section of the said bill, the punishment of death is authorized for an assault with an intent to murder, with an intent to escape, upon either of the inspectors, the agent, the principal or deputy keeper, or any person permitted to visit the State prison, committed by any person who now is or shall be convicted of any crime, for which he has been or shall be sentenced to imprisonment, at hard labor, for life, in the State prison; and thus for the mere intention to commit a crime, a punishment of the most terrific kind is to be inflicted, when by the seventh section of the act entitled "*An act relative to the State prison*," full power is given to the principal keeper and any two of the inspectors, to punish all convicts for assaults, by confinement in the solitary cells of the said prison on bread and water, only for such term as they shall judge proper and necessary; a species of punishment sufficiently severe and well adapted to break down the spirit of the most refractory.

2. Because the great object in instituting the State prison at an enormous expense, was to ameliorate our criminal code by justly apportioning punishment to offenses, that by rendering them less sanguinary, convictions might inevitably ensue on criminality; this object will be wholly defeated, if the second section of the bill pass into a law, and our code will lose the mildness of its character and become more sanguinary than the old system itself.

3. Because, since the establishment of a guard, maintained at the public expense, the inducement to commit assaults on the keepers for the purpose of escaping, have been in a great measure taken away, and there exists no public necessity to give this sanguinary feature to our criminal laws.

4. Because the third section of the bill punishes the same offense, when committed by persons imprisoned for a term of years, in a far different manner, and creates a distinction in punishment, with reference only to the person of the offender;

a discrimination in many cases wholly unfounded, for in point of moral turpitude, the forging an order for the payment of money is not greater than a larceny to the same amount, and although the punishment for these offenses is different, it is not on account of greater depravity but as respects the effects on society.

5. Because, by the fourth section of the bill, death is to be inflicted for the willful and malicious burning of a barn or a grist-mill; and thus for the mere destruction of property, without any hazard to the lives of individuals, the principle heretofore exploded is revived, and a precedent is established which would warrant the infliction of death for any deprivation of property.

6. Because, by the sixth section of the bill, the punishment of whipping is authorized; a punishment eminently calculated to eradicate all future sense of shame, and to render its object wholly incorrigible.

The Assembly passed the bill, but the Senate refused; consequently it did not become a law.

ALBANY, April 4, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to amend an act entitled 'An act appointing commissioners for the inspection of turnpike roads,'*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because the second section of the bill authorizes the said commissioners, or a majority of them, to order any toll gate on any turnpike road within their county, which they shall judge out of repair, to be opened; and it prescribes an effectual penalty for a neglect or refusal to obey such order. The bill affords no guide or limitation to the judgment of the commissioners, nor any opportunity to the proprietors of the turnpike road to be heard; nor is any mode of appeal presented. The order of the commissioners is to be preemptory in the first instance, and requires instantaneous

obedience. The bill, therefore, vests in these commissioners an arbitrary power over the interest and property of individuals, which is unknown to the Constitution, and if carried into effect, would become in a high degree injurious and alarming; for the rights vested in the stockholders of a turnpike company, incorporated by law, are as sacred and as much entitled to protection as any other private rights, and the stockholders cannot constitutionally be deprived of them by the mere allegation of a forfeiture, without a trial and conviction of such forfeiture in the ordinary course of justice.

Notwithstanding the objections, the Legislature passed the bill into a law.

ALBANY, *April* 4, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to amend an act entitled 'An act to regulate highways, in relation to certain towns in the county of Westchester,'*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because the bill is unequal and partial, for it requires non-resident proprietors of lands in certain towns in the county of Westchester, to work on the highways in those towns, when the same duty is not required of non-resident proprietors in any other part of the State adjoining a neighboring State.

2. Because the bill makes it lawful to assess all persons who possess lands in the said towns, and who reside in the State of Connecticut, to work on the highways in the said towns; and it makes it the duty of the overseers of highways in the said towns to warn all such persons to appear and work, and in case of neglect or refusal on the part of such persons, they are made liable to the usual fines and penalties for such default. The bill is, therefore, either nugatory and calculated to defeat itself, or it makes it the duty of the overseers to enter into the State of Connecticut to give such warning, for the warning required by law is a personal notice, or one left at the dwelling-house of the party, and to authorize

such entry is unlawful, and an evasion of the jurisdiction of Connecticut.

3. Because the bill provides that the fines and penalties incurred by such persons for default of appearing and working, shall be recovered in the same manner as is directed by the act entitled "An act to regulate highways," and that act provides that the penalties shall be levied by distress and sale of all the goods and chattels of the party, under a warrant directed to the constable of the town where the delinquent resides. The bill is therefore incapable of execution.

4. Because the duty of working on the highways is a personal service, and is not made a lien or charge upon land, and to exact any service or levy any assessment upon persons not resident within this State, otherwise than by making the same a lien upon the land, is an assumption of jurisdiction which cannot and ought not to be exercised.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 4, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to amend an act entitled, 'An act for the more speedy recovery of debts to the value of twenty-five dollars, and for other purposes,'*" was before the Council, which adopted the following objections, reported by Justice Thompson, viz.:

1. Because, by the first section of the bill, without any other evidence than the oath of the party plaintiff, that the defendant has departed or is about to depart from any city or county (New York excepted) or is secreted within the same with intent to defraud any of his creditors, or to avoid being served with the ordinary process of law, justices of the peace are authorized to issue an attachment against the goods and chattels of such defendant, thereby authorizing and requiring the constable, to whom it shall be directed, to take into his custody the goods and chattels, to answer the judgment and costs, if any shall be obtained, unless security be given for the delivery of the same, at the time of issu-

ing execution on such judgment. The powers hereby vested in a creditor are too dangerous and unguarded, and may be converted to the purposes of vexation and oppression, he being authorized to attach the goods and chattels of his debtor to an indefinite amount, to answer the most trifling and inconsiderable demand.

2. Because the surety required of the defendant, in order to retain the possession of his goods and chattels after service of the attachment, is in the nature of bail, and by the operation of the said first section of the bill, security to an unlimited amount may be required for the least possible demand, which would virtually be an infringement of the eighth article contained in the statute concerning the rights of the citizens of this State, which declares that excessive bail ought not to be required.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *April 4*, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act granting to John R. Hallenbake, and such other persons as with him shall associate, the privileges of laying out and constructing a free road,*" was before the Council, which adopted the following objections, reported by Justice Thompson, viz.:

1. Because, by the general statute of the State, entitled "*An act to regulate highways,*" full and ample provision is made for laying out all necessary public or private roads in ordinary cases, and public policy requires that all laws relating to the same subject, and the mode of obtaining redress, should be as general and uniform as the nature of cases will admit. It is therefore inconsistent with the public good, and forming a precedent that may be dangerous in its consequences, to legislate on individual cases, where the existing law is fully adequate for relief, if any ought to be afforded.

2. Because, by the first section of the bill, power is given to the persons to be appointed to lay out the road, to lay out the same in such place as they shall judge best and most convenient, without acting under the solemnity of an oath, or being under the

salutary restriction contained in the general law regulating highways, which prohibits any road from being laid out through gardens and orchards without the consent of the owner; thereby giving to the persons so to be appointed unusual and extraordinary powers, without any reason whatever appearing for the same.

3. Because, by the second section of the bill, the persons to be appointed to lay out the road are to assess the value of the lands and damages of the respective owners and occupants through which the same shall be laid, without acting under the obligation of an oath.

4. Because, by the third section of the bill, the road to be laid out is to be considered and used as a public highway, without any necessity of the same appearing; whereas, by the general law, no road can be laid out through improved lands without the application of twelve reputable freeholders of the town in which such road shall be laid out, certifying upon oath that such road is necessary and proper; which is a wise and prudent precaution against the laying out unnecessary roads.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *January 27, 1807.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Spencer, Justice.

A bill entitled "*An act to amend an act entitled 'An act relative to unappropriated and forfeited lands, and for other purposes,'*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because, by the fifth section of the bill, the Attorney-General is authorized in all cases of mortgage given to the people of this State, or to any other person, and the interest therein hath become vested in the State by assignment, attainder or otherwise, to foreclose the equity of redemption in the same, by the simple process of advertising the lands for sale for six months in one of the public newspapers printed in this State, and on the outward door of the court-house of the county where the premises lie, and that every

sale in pursuance of such notice is to be a bar to all claims on the part of the mortgagor or his representatives. A knowledge of this proceeding may or may not reach the party residing on or claiming the lands mortgaged, and there is no mode pointed out in the bill in which the proceedings may be arrested and the truth of any valid matter in bar tried; and unless the defendant resorts to the aid of the Court of Chancery, he is placed entirely under the discretion of the Attorney-General. There are but few instances in which the law has authorized this mode of foreclosure by the act of the party, and these are special cases and founded on peculiar reasons; whereas the provision in the present bill is general and applicable to all cases in which the State is interested. It is therefore a dangerous mode of proceeding, and although it may suit the convenience of the public officer it deprives the party in interest of that wise and excellent security of the common law, by which no person is to have his property taken from him until, by a personal notice or arrest, he has been called to meet his adversary in a court of justice.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 27, 1807.* Present—Governor Lewis; Lansing, Chancellor; Kent, Chief Justice; Spencer, Justice.

A bill entitled "*An act relative to the punishment of certain crimes,*" was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because, by the second section of the bill, the infliction of the punishment of whipping is authorized, which, instead of operating as a corrective, is calculated to degrade offenders and by destroying their sense of shame, rendering them incorrigible.

2. Because the power of adjudging an offender to be whipped, is by the bill vested in a special sessions which proceed without the intervention of a jury, and from that circumstance, as well as from the organization of those courts, is particularly exposed to be abused, and wrested to oppressive purposes.

3. Because the fourth section of the said bill does not distinguish between the setting fire to a dwelling-house, by which life as well as property may be endangered, and the burning an out-house; and yet a variety of circumstances unavoidably occurring may create a great disparity in the crimes; and thus death, the most terrific sanction in the criminal code, may be legally inflicted for offenses not jeopardizing or affecting the life of individuals, whereby the relative proportion between crimes and punishments will be destroyed.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *April 3*, 1807. Present—Governor Lewis; Kent, Chief Justice; Thompson, Justice.

A bill entitled "*An act relative to Columbia College in the city of New York*," was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The Council object to the said bill, as inconsistent with the spirit of the Constitution and the public good.

Because, by the sixth section of the bill, it is provided that in case of the vacancy of the seat of any of the trustees of the said college, it shall be the duty of the trustees to state such vacancy to the regents of the university, and that it shall be the duty of the regents to appoint a proper person to supply the same. This provision is contrary to a privilege and immunity granted to the said college by its charter of the 31st of October, 1754, which authorizes the trustees to fill up such vacancies whenever the same should occur; and it appears by the representations of the trustees, referred to in the preamble to the said bill, that the said alteration is made without the consent of the corporation.

The right in question has received the repeated and explicit sanction of government, and it has thereby acquired all the security which any grant or chartered right can receive under the Constitution and law of the land. The charter declares that all and singular the privileges and immunities thereby granted shall be held and enjoyed by the governors or trustees of the said college

and their successors forever. This charter, as well as all other charters and grants made prior to the 14th of October, 1775, was by the thirty-sixth article of the Constitution of this State, saved from forfeiture by reason of the Revolution; and by the eighth and ninth sections of the act of the 13th of April, 1787, entitled "An act to institute an university within this State, and for other purposes therein mentioned," the charter of the said college is fully and absolutely ratified and confirmed, and it is in a particular manner declared that all vacancies in the said board of trustees shall be supplied in the manner directed by the charter.

It is a sound principle in free governments, and one which has received frequent confirmation by the acts of the Legislature, that charters of incorporation, whether granted for private or local, or charitable, or literary or religious purposes, were not to be affected without due process of law, or without the consent of the parties concerned. And although it were to be admitted that legislative interference would be justified by some strong public necessity, to which all chartered privileges may be deemed subservient, no such necessity is presumed to exist in the present case. The vacancies among the trustees of Columbia College have hitherto been supplied in the mode pointed out by the charter, by a succession of virtuous and learned men under whose care, as it would appear from the annual reports of the regents, the interests of the college have been discreetly managed, and the cause of learning successfully promoted.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

ALBANY, *April* 6, 1807. Present—Governor Lewis; Kent, Chief Justice; Thompson, Justice.

A bill entitled "*An act to restrain insurance of lottery tickets, and for other purposes,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The Council object to the said bill, as inconsistent with the spirit of the Constitution, and the public good.

Because the last section of the bill declares it to be unlawful for any company not incorporated by the laws of this State, or of the United States, or any private individual not residing within this State, to set up and keep within this State, by their agent, or otherwise, any office to insure houses or goods against fire, or vessels or merchandise against maritime losses, and that every such insurance shall be void, and every person receiving any premium therefor shall forfeit double the amount thereof.

1. This provision is inconsistent with the second section of the fourth article of the Constitution of the United States, which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." This intercommunity of privilege secured to the citizens of the several States applies to their personal rights and immunities, and among others, to the free right to exercise trade and commerce.

It goes to interdict all commercial exclusions and discriminations as between the inhabitants of different States. But the bill in question creates a new and injurious distinction. It denies to the citizens of other States a right allowed to the citizens of this State, of making a contract of insurance by an agent. An inhabitant of Albany may, by his agent, keep an insurance office in New York; but, if the bill passes, an inhabitant of New Jersey may not. This is an unconstitutional discrimination in a matter of personal privilege, and it is an unprecedented prohibition. If the bill had prohibited all insurance by private individuals or companies, by means of agents, whether the individuals or companies did or did not reside within this State, then there would have been an equality between the civil immunities of the citizens of this and the other States, and the present objection would not have applied.

But as the bill is now to operate, the prohibition might, upon the same principle and with equal right, be extended to interdict a non-resident merchant or manufacturer from keeping an agent or warehouse in New York for the sale of his goods or productions.

2. The bill is repugnant to the general good. A contract of insurance, when founded on a substantial interest, and not perverted to gambling purposes, is one of the most useful species of

contracts which arise in the whole course of commercial transactions. It ought to be left freely to be made, and not placed under the restrictions of a monopoly. If a company or an individual in another State will insure upon more reasonable terms, or possesses a sounder credit, or a more prompt disposition to adjust losses than any with us, why should a citizen of this State be denied the privilege of obtaining such insurance? And if his privilege to do so is admitted to be entire and perfect, why should a legal embarrassment be thrown in his way by prohibiting such insurances through the means of an agent here? It is a plain and most convenient rule of law, that all contracts are equally valid when made by an authorized agent as when made by his principal; and this rule ought not to be set aside, without some important object which is cogent in its reason and general in its application. The only apparent tendency of the provision in the bill is to render it very inconvenient to effect insurances except with insurers who reside in New York; and why should this inconvenience be created? It is indirectly compelling the public to deal with the New York insurance companies, and with none other. This may advance the interests of the stockholders in those companies; but by diminishing the competition, and thereby raising the premiums for insurance, it will operate as a tax upon the community at large. It is a maxim which applies to every kind of business, that the public is generally best served when the door is left open to every one equally to advance his claims for employment. Sound policy would seem, therefore, to dictate that a free and unfettered competition be left between our underwriters and those abroad, as our citizens would then be enabled to cover their property from loss by resorting to those persons who, in their judgment, would do it with the lowest premium and upon the best security.

The Assembly refused to pass the bill; consequently it did not become a law.

On the 9th of June, 1807, William W. Van Ness was appointed a Justice in place of Brockholst Livingston, resigned; and on the 1st of July following, Daniel D. Tompkins succeeded Morgan Lewis as Governor.

ALBANY, *January* 26, 1808. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Spencer, Justice.

A bill entitled "*An act relative to certain crimes therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because, by the sixth section of the bill, certain offenses committed without the limits of this State, by a citizen thereof, are made cognizable in the courts of this State, equally as if they had been committed within one of its counties. This may, perhaps, subject the party offending to a double punishment for the same offense, for if he should commit one of the offenses enumerated in the preceding section, in any other State in the Union, against the bank paper of such State, he would, of course, be liable to punishment in such State, and no sufficient reason appears, founded either in justice or sound policy, why the courts of this State should take cognizance of such offenses. Every community is to be deemed competent to preserve itself and to exact obedience to its laws. The provision in question is in this view a novel one, and contrary to the fundamental maxims of civil government. It is very questionable, also, whether an act done without this State, and within the jurisdiction of another government, although such act relate to the bank paper of this State, ought to be made cognizable here, because it is an obvious and acknowledged principle in legislation that laws have no operation beyond the jurisdiction of the government which enacts them, and it would seem to be a solecism in jurisprudence to hold a law broken by an act done beyond the limits of its operation.

2. Because, by the ninth section of the bill, the courts of general sessions of the peace are authorized to punish, by whipping, persons convicted of petit larceny. This punishment is calculated not to reform but to harden offenders, because it covers them with indelible disgrace. Its example is injurious to the spectators, because the punishment naturally excites disgust in some, and hardens sensibility in others. It is pernicious as a precedent, because it is an important innovation upon the principles of the new criminal code, established within the last twelve years, and

recalls the vestiges of the former system, which it was then deemed an effort of humanity to obliterate.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

February 5, 1808, the two Houses and Council directed that the respective messages be transmitted by the Clerks of the Houses and the Secretary of the Council, instead of the members of the above bodies as heretofore.

On the eighth of February, Joseph C. Yates was appointed a Justice in place of Daniel D. Tompkins, elected Governor.

ALBANY, *November 1, 1808.* Present—Governor Tompkins; Lansing, Chancellor; Spencer, Thompson and Van Ness, Justices.

A bill entitled "*An act supplementary to the act entitled 'An act to grant to Terence Donnelly and others the exclusive right of running stage wagons on the west side of Hudson river, between the city of Albany and the northern boundary line of the State of New Jersey,' passed the 26th day of February, 1803,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because the provision to make by-laws by a majority of the proprietors named in the act to which this bill is intended to be supplementary, does not appear to have been prayed for by all the proprietors, and the right of the majority to control will operate as an invasion of the interests of the minority by depriving them of the legal power of giving or withholding their consent to any measures affecting such interests.

Because the bill is unprovisionary as to the manner in which representatives of the original proprietors are to be admitted to vote in cases of the subdivision of their shares.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, November 1, 1808. Present—Governor Tompkins; Lansing, Chancellor; Spencer, Thompson and Van Ness, Justices.

A bill entitled "*An act to enable the directors and company of the Canajoharie and Palatine Bridge to rebuild the same,*" was before the Council, which adopted the following objections, reported by Justice Yates, viz.:

Because, by the first section, it is enacted that such stockholder as shall not pay on each share, the first requisition of the additional sum of \$15, on or before the time limited for the payment thereof, is not only deemed to have waived his or her right of increasing the sum payable on each share, as to the shares on which such payments shall not be made, but the president and directors are authorized to cause such shares so waived to be sold at public vendue, in manner therein described, and to pay the proceeds arising from such sale to the person or persons who were the owners of such shares, in proportion to the number of shares such person may have had, after deducting the costs of advertising and sale thereof; whereby the existing right of such stockholder under the act entitled "*An act to authorize the building of a toll bridge over the Mohawk river,*" passed 31st of March, 1801, would be materially impaired if not virtually extinguished, without the assent of the stockholders.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, February 24, 1809. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness and Yates, Justices.

A bill entitled "*An act for laying out Canal street in the city of New York, and for amending the acts relating to streets and roads therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, by the seventh section of the said bill, it is provided that the commissioners therein described shall be authorized to enter upon and appropriate such lands as may be necessary for

the purposes of the said act, before tender or refusal of the damages awarded or assessed therefor, and that if such damages are not paid within three years from the passing the said act, an action may be sustained by the owner of such land for the recovery thereof from the mayor, aldermen and commonalty of the city of New York; and by the twentieth section of the said bill, it is provided that it shall not be necessary to make payment or tender of any sum awarded for ground taken for streets, but that the owner of such ground may, in case the sum so awarded shall not be paid within one year after finding verdict, ascertaining the same, recover in like manner in an action of debt; thus appropriating private property to public uses, deferring a recompense therefor to a remote day and putting the owner to his action for its recovery, and thus sanctioning the dangerous doctrine that the lands of the citizens of this State may be taken from them for ordinary public exigencies without an immediate compensation, leaving the time of making it to be varied at discretion and to be pursued in a course of litigation which may involve great injury or even the ruin of the persons affected by it.

Because, by the thirteenth section of the said bill, it is enacted "that whenever any of the proprietors of any such lands, tenements, hereditaments and premises shall be infants, *non compos mentis*, or absent from the city of New York, the said mayor, aldermen and commonalty may pay the sums mentioned in such report that would be coming to such proprietors, respectively, into the Supreme Court, to be received, disposed of and improved as the said court shall direct, and such payment shall be equally valid and effectual as if made to the proprietors themselves, if they had been present, of full age and *compos mentis*;" which provision is incompatible with the organization of the said court and its modes of conducting business according to the course of the common law, and because the duty thereby attempted to be imposed on the judges of that court, of securing, disposing, and improving such money, is not in the remotest degree connected with the exercise of their judicial functions.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *February* 24, 1809. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness and Yates, Justices.

A bill entitled "*An act to enable the trustees of the Reformed Dutch Church of the township of New Utrecht in Kings county to sell the parcel of land therein mentioned,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because the third section of the act entitled "An act to amend the act entitled 'An act to provide for the incorporation of religious societies,'" passed March 14th, 1806, authorizes the Chancellor, upon the application of any religious corporation, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom by such corporation; and because the Chancellor can, in a summary mode, with little expense or trouble to the applicants, institute an inquiry into the title by which the same is derived to such corporation, and whether the same is affected by any condition or limitation detracting from a general right of disposition, and which, if existing in this case, from the terms of the bill, appears not to have been an object of attention.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 14, 1809. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act to equalize the four great districts of this State,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

The bill is to be considered either as a new apportionment of the Senators, or as a new division of the districts, and in either view it appears to the Council to be inconsistent with the spirit of the Constitution and the public good.

1. By the fourth article of the amendments to the Constitution it is provided that upon the return of every census the Legislature

shall apportion the Senators and members of Assembly; and the Legislature did accordingly, on the first day of April last, by the act entitled "An act apportioning the representation in the Legislature according to the rule prescribed by the Constitution," make such apportionment in pursuance of the census taken in 1807. The apportionment having thus been made, the provision in the Constitution is complied with, and it ceases to operate until the taking of another census. The same article says also, in the like words, that upon the return of every census the number of the Assembly shall be increased, and yet it must be obvious that the increase cannot be admitted at any other time than upon the return of the census. The fourth article says nothing about the division of districts. It does not say that the districts shall be apportioned to the Senators, but that the Senators shall be apportioned among the great districts, and the true construction of it is, that upon the return of the census, the Senators may be apportioned among the districts as they stand, and not that the districts are necessarily to be disturbed and altered upon every such census. And it is extremely important, both as it respects the security of the Constitution and the just rights of the electors which are concerned in these apportionments, that when an apportionment is once made it should be steadily adhered to until the return of another census. There is no rule for making another apportionment by the census of 1807, and that becomes an uncertain guide for a second apportionment, because the population of the districts has varied in the meantime and that variation increases every year. If a second apportionment may be made now, it may equally be made in any future session and even in the year preceding the taking of another census, and thus all accuracy in the rule of apportionment would be lost and the constitutional objects of the census defeated. That the present bill does in reality make an entire new apportionment of the Senate appears from the second and third sections of the bill which contain the provisions for that purpose. Every general division of the districts necessarily involves in it a new apportionment of the Senators. The one object cannot well be obtained without producing the other, and consequently public convenience would seem to require that every general alteration of the districts, whenever the same shall become

necessary, should be made at the same time with the general apportionment of the representation.

2. But if the bill could be considered (as its title purports) only as a new division of the districts according to the power vested in the Legislature by the twelfth article of the Constitution, it appears to be equally objectionable. That power was given expressly "for the convenience and advantage of the good people of this State;" and whenever such alterations are made, public convenience requires that they should not take effect until some future and distant day, so as to give the people sufficient opportunity to acquire that general information within their new districts which may be requisite to a judicious choice of their rulers. The present bill is to take effect at the ensuing election. This is evidently too short a period, and the bill may operate as a surprise upon the electors, especially in the eastern district, which by the bill is made to comprehend very distant counties which from their local situation have hitherto had very little commerce or intercourse with each other. To break up and new model all the great districts within six or seven weeks of the senatorial election cannot, in the opinion of the Council, conduce to the public good or the convenience or advantage of the people. The act of the 4th of March, 1796, presents a valuable precedent upon this subject. It made alterations in the districts far less material than those contained in the present bill, but it provided that the alterations should not go into operation until the ensuing year.

There are other and very inconvenient consequences to which the principle of this bill might lead, and there are abuses to which such a precedent might hereafter be perverted, but the Council deem it unnecessary to trace them. The public good seems to dictate that the great districts should not be new modeled very frequently; that when alterations become necessary, they should, to every practicable extent, preserve the original district character of the Senators elect; and that they should not go into operation very promptly, least they might affect the suffrages of the freeholders, by distracting their choice or confounding their efforts to unite in upright and intelligent candidates.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January 30, 1810.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to establish surveys in the city of New York, and to grant additional powers to the mayor, aldermen and commonalty of the said city, in relation thereto,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, by the third section, the surveyors, when called upon, are to lay out and apportion any lot within any square in such manner as may, in their opinion, most likely procure equal justice between the parties concerned, and the maps, evidences and vouchers which influenced their decision are to be recorded, and future surveys to be governed by such returns. This new mode of proceeding does, in an indirect way, compel the proprietors of lots to exhibit their titles to persons not acting judicially, or to submit to have inferences made to their prejudice from evidence consisting of an undistinguished mass of affidavits, maps, vouchers, field-books and memoranda, collected without legal discernment or judicial authority. This may be productive of discord and litigation, even as to freehold estates long since defined; for the whole of the compact part of the city lying southward of the line described in the bill is subject to the provisions thereof, and the fourth section of the bill declares that every survey, plan, map and field-book, made in conformity with the provisions in the bill, shall be considered as matters of record, and shall be final and conclusive as well in respect to the corporation of the said city as in respect to all other persons. This whole provision is either rendered nugatory by the fifth section of the bill, or it will have an influence injurious to the rights of private property, as established and secured according to the course of the common law; and in either alternative the bill appears to be inconsistent with the public good.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act for the relief of William H. Devoe,*" was before the Council, which adopted the following objections, reported by Justice Thompson, viz.:

Because, by the first section of the bill, the said William H. Devoe is authorized to continue the mill-dam erected and now occupied, in the town of Duanesburgh, in the county of Schenectady, notwithstanding, by reason thereof, the lands of other persons may be overflowed, and the owners of such lands are compelled to part with the same against their will, at the valuation of appraisers appointed by the Court of Common Pleas of the county of Schenectady, by means whereof the property of one individual is taken without his consent, and appropriated to private use, without any public object appearing to require or warrant such legislative interposition.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to establish and confirm the original surveys of the lots in the Military Tract,*" was before the Council, which adopted the following objections, reported by Chief Justice Kent, viz.:

Because it prescribes a particular rule of evidence of title to lots in the Military Tract, whereas, by the established laws of the land, the title to lots in that tract is founded on the patents respectively issued, and on the evidence of location and construction which those patents furnish. Original surveys are now, by the settled rules of law, evidence of the bounds of lots, but like other matters of evidence, they may be controverted by better proof of the intention of the parties and of the truth of the case.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act granting relief in certain cases to the inhabitants of the city of New York, and to the inhabitants of the town of Brooklyn, in Kings county,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, if the conveyance across the East river of the goods, wares and merchandise described in the bill, is not interfered with by private rights, its provisions are useless; and if any such rights are claimed, or exist, they are appropriately and exclusively of judicial cognizance.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act for the relief of Nicholas Hardenburgh, Thomas C. Jansen and others, and for other purposes,*" was before the Council, which adopted the following objections, reported by Justice Spencer, viz.:

1. Because, by the first section of the bill, commissioners are appointed to make partition of the real estate of Cornelius I. Jansen, whereof he died seized, among his four children, and the only inducements to the bill appear to be, that two of the said children are infants, and the lands to be divided are situated in several counties of this State. The act entitled "*An act for the partition of lands,*" and the acts supplementary thereto, afford the petitioners for the present bill full and complete provision for all the objects contemplated by the first section of the bill, so far as relates to the partition of the said lands. To legislate in individual cases, without circumstances in anywise peculiar, and in cases already provided for by general laws, appears to the Council to be against sound policy as well as the public good.

2. Because, by the said first section of the bill, it is enacted that any deed or deeds of partition, hereafter to be executed by the petitioners, or any of them, for the purpose of perfecting a partition of the said real estate, or any part thereof, according to the partition to be made by the commissioners therein appointed, or any two of them, shall have the same effect as if the person or persons who shall execute such deed or deeds was or were of full age at the time of the execution thereof.

In obviating a disability by law for wise purposes, founded on a presumed want of discretion to manage property advantageously, there is no provision guarding the interests of the infants, by referring the partition thus to be made to the investigation of some known and established tribunal, to examine its fairness, justice and regularity, before the infants execute the deeds of partition. In analogous cases, there has been a reference to the Court of Chancery, that court having, by the common law, the superintendence of infants and their estates. By the present bill, the acts of the commissioners, if sanctioned by the infants, are binding and conclusive; and, in this respect, the act "for the partition of lands" has a manifest superiority in point of justice, for by that act a power is given to the Supreme Court to set aside the return of the commissioners for injustice or irregularity, acting under the same sanction as the commissioners are required to act by the said bill.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of the heirs of Thomas H. Taylor, deceased,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because there are no reasons appearing in the bill why trustees should be appointed to sell the real estate of the infant heirs of Thomas H. Taylor, deceased, any more than the real estate of any.

other infants. The general law of the land vests the estate of the ancestor in his heirs, and it ought not to be taken from them without their consent, unless under peculiar and strong circumstances really existing and duly disclosed. The trustees named in this bill are left to dispose of the real estate of the children as to them shall seem meet, without any direction as to the time and mode of the sale, and they are left to deduct their reasonable costs and charges without any tribunal to guide their discretion or to determine what costs and charges are reasonable. Such loose and undefined power to be exercised over the estates of infants, are dangerous to the rights of property, and pernicious as a precedent. Every new created trust of this kind should be placed under the control and guidance of that court which is intrusted with the general guardianship of infants.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of Persis Pain and others,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because it appoints Minor Thomas a trustee to sell the real estate of Nathaniel Pain, deceased, and to apply the proceeds in such manner as he shall deem necessary for the maintenance of the widow and infant children of the said Nathaniel Pain, on his giving a bond, with surety, to be approved of by the surrogate of the county of Seneca, for the faithful execution of his trust.

There are no circumstances stated in the bill to call for such an extraordinary exertion of legislative power. It is taking from the widow and from the infants the freehold estates vested in them by law; the time, notice and manner of the sale of the real estate are not prescribed, but left at large to the discretion of the person appointed trustees by the bill. The amount of the security to be given is also left at large to the surrogate, nor is there any provi-

sion in the bill for the disposition of the bond. The bill is in all these respects extremely loose in its provisions, and dangerous to the rights of property. The appointment of trustees, the guidance of their discretion, and the review and control of their proceedings ought to be placed under judicial cognizance, and especially when they are to divest infants of the real estate secured to them by inheritance.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 30, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of the heirs of Philo Day, deceased,*" was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

Because there are not sufficient circumstances disclosed by the bill to warrant legislative interference with the rights of minors, and because the exercise of the power of selling the real estate of the infants and the amount of the costs and charges to be deducted, and the security to be given for the faithful execution of his trust by the trustee, are not placed under the cognizance and control of any judicial tribunal. A single magistrate is to take the security, and that is all the control specified in the bill. The safe and proper course is to place the exercise of such powers under the supervision of the Court of Chancery as the tribunal immemorially and specially intrusted with the care and guardianship of infants.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *April* 2, 1810. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Van Ness, Justices.

A bill entitled "*An act for the relief of the minister, elders and deacons of the Reformed Protestant Dutch Church in the town of German*"

Flats in the county of Herkimer," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

The Council object to the said bill as improper to become a law of this State, for the reasons assigned during the last session, in their objections to a bill of similar import, appearing in the printed journals of the honorable the Assembly of that session, page 212, which objection is in the words following:

Because the third section of the act entitled "An act to amend the act entitled 'An act to provide for the incorporation of religious societies,' passed March 14, 1806," authorizes the Chancellor, upon the application of any religious corporation, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom by such corporation; and because the Chancellor can, in a summary mode, with little expense or trouble to the applicant, institute an inquiry into the title by which the same is derived to such corporation whether the same is affected by any condition or limitation detracting from a general right of disposition, and which, if existing in this case, from the terms of the bill, appears not to have been an object of attention.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 23, 1811. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer and Van Ness, Justices.

A bill entitled "*An act for the relief of the representatives of Andrew Jones, deceased,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because the bill authorizes the guardians of infants to dispose of the estates of their wards without any other restraint than the certificate which it provides shall be given by the surrogate of Orange county, that in his opinion such disposition is necessary and that he approves thereof, and of the conveyances to be by them made, without prescribing the mode in which, or the evidence from which, such necessity or benefit is to be deduced;

thus departing from the usual provision in such cases, of committing the superintendence of the trust to the Court of Chancery, and thus warranting a total alienation of the estate of infants in a case in which, by the ninth section of the act entitled "An act to raise moneys to drain the drowned lands in the county of Orange," infants are authorized to redeem, when they attain their full age; a case somewhat similar to a lien by mortgage.

The Assembly refused to pass the bill; consequently, it did not become a law.

ALBANY, *March* 30, 1811. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act to prevent frauds at elections, and for other purposes,*" was before the Council, which adopted the following objections, reported by Justice Van Ness, viz.:

Because, by the provision in the first section of the said bill, any person who shall among other things swear that he is twenty years of age, may vote for members of Assembly, thereby allowing minors to vote for members of Assembly; whereas, by the Constitution of this State, all male inhabitants of full age and who possess the other qualifications therein mentioned, shall alone be entitled to vote for members of Assembly.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *April* 5, 1811. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act to prevent frauds at elections, and for other purposes,*" was before the Council, which adopted the following objections, reported by Chancellor Lansing, viz.:

1. Because the description of *person of color* who is required to produce a certificate of his freedom at all elections is too vague

and uncertain to afford a determinate test, either as presented to the eye, or as applied to the quality of the blood, which comprehends all the gradations of the mixed races between the African black and the clear complexion of the white man, and even beyond it, as in that sense the stain is indelible; thus imposing on many citizens whose ancestors have uninterruptedly enjoyed the elective franchise under the colonial as well as the State government, and to whom that right has been transmitted with their freeholds, the humiliating degradation of being challenged in consequence of a supposed taint, and being excluded from voting in common with their fellow-citizens on their own oaths, and thus exposing electors to wanton insult and contumely, merely on account of their complexion, whether produced by the accidental circumstances of birth, climate or disease, in the act of exercising the noblest right of a freeman.

2. Because the bill selects a particular description of persons who are, under the Constitution and laws of the State, entitled to the elective franchise, many of whom were born free, and imposes on them restrictions and limitations to the exercise of rights to which they are now entitled in common with other citizens of this State; and because no adequate means are afforded them, to restore themselves to the rights and privileges of which, by this bill, they are deprived, inasmuch as there is no provision for compelling the attendance of witnesses before the officers authorized to take the proof of their freedom; thus subjecting the important right of voting at an election to the will and pleasure of others, and who may in many cases be interested in withholding the requisite evidence of freedom.

3. Because, heretofore, it has been generally assumed as a principle that every male citizen of full age possessing the other qualifications to vote, required by law, was presumed to be a freeman, until the contrary appeared. In the present bill a different principle is established, to wit, that all black men and men of color are presumed to be slaves until they prove that they are free. A mode of proof is prescribed of a nature different from that heretofore adopted in relation to the qualification of electors in other cases. Their own oaths are not to be received, nor are they permitted to produce proof to the inspectors. They must produce

their proof to other tribunals, and two several certificates must be obtained before they can be permitted to vote. Many black men and men of color in this State were born free, and many have been manumitted in the manner sanctioned by our laws. These men are scattered through the State, and many of them undoubtedly reside in parts remote from the places where they were born or manumitted; no doubt can be entertained that this act would not be known to many of those interested in its provisions in time to enable them to procure the certificates therein required. This bill, before it goes into operation, ought not only to be brought to the knowledge of the inspectors of every town so as to guard against fatal errors, but it should also be brought to the knowledge of all those whom it essentially affects, in such a reasonable time before the elections as to enable them to procure and exhibit the evidence of freedom, and procure the certificates therein stated. No case short of absolute necessity would justify the passage of a bill which may disfranchise, even for one year, any portion of the constitutional electors of the State. Not an instance is recollected, neither is any believed to exist, when such a radical change in the election law has been made so short a time before the election. In the year 1809, a bill passed the honorable the Senate and Assembly, entitled "An act to equalize the four great districts of this State," which came to the Council of Revision more than seven weeks before the election. The Council objected to the bill, and one ground of objection was, that the period for its promulgation was so short that it might produce great public inconvenience. The Council, for these reasons, consider this bill as a violation of principle, dangerous in precedent and against the public good.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

ALBANY, April 5, 1811. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of the representatives of William H. Philips, deceased,*" was before the Council, which

adopted the following objections, reported by Chief Justice Kent, viz.:

Because it authorizes the guardians of the infant children of William H. Philips, deceased, to sell the real estate of the said children, without any direction as to the time and mode of sale, and without giving security to apply the moneys arising on such sale for the benefit of the children, and without subjecting the guardians to any judicial control in the execution of their trust. Such an unchecked and unlimited discretion in guardians is without precedent and contrary to the uniform practice of the Legislature in like cases, and is dangerous to the rights of infants.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 5, 1811. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of James Ford*," was before the Council which adopted the following objections, reported by Justice Van Ness, viz.:

Because, by the recital to the said bill and by the petition and documents accompanying the same, it appears that ten lots of land in the Military Tract have been sold by Ebenezer R. Hawley, late sheriff of the county of Onondaga, on an execution issued out of the Supreme Court of Judicature of this State for collecting \$807.34, for the trifling sum of \$16, and that since the sale there has been a lapse of nearly eight years. To permit a mere bystander, though a deputy of the said sheriff, but who did not make the sale, under circumstances which afford such strong evidence of fraud or unfairness, now to execute a deed to carry the sale into effect, appears to the Council to be highly improper. No satisfactory reason has been given why the deed was not executed by the sheriff, and at this late day it is to be presumed that some good cause existed for his omission or refusal. This objection derives additional force from the consideration that the present

bill appears to have been passed solely upon the representation of James Ford, the plaintiff in execution and the purchaser of the said lots, without the knowledge of the defendants against whom the said execution was issued.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *January* 28, 1812. Present—Governor Tompkins; Lansing, Chancellor; Spencer, Justice.

A bill entitled "*An act for the security of the estates of femmes covert in certain cases*," was before the Council, which adopted the following objections, reported by Chancellor Lansing, viz.:

1. Because the bill in the cases therein mentioned exempts the estate of a feme covert from liability of satisfaction of her husband's debts, contracted during her coverture; thus impairing the obligation of contracts and depriving the creditors of the husband of a right which, in many instances, may have been the sole inducement to giving him credit.

2. Because the provisions in the bill may facilitate collusions and frauds, the more difficult of detection from the legal unity of persons and interests of husband and wife, and their incompetency of testifying against each other.

3. Because, by the provisions in the bill, the husband is divested of many of his important rights, in consequence of his mere refusal to cohabit with his wife, notwithstanding her conduct may have been so scandalously flagitious, corrupt or improper as to render such refusal perfectly justifiable.

4. Because the provisions of the said bill are, in the opinion of the Council, dangerous and impolitic, having a tendency to prevent a reconciliation between the husband and wife, when differences, arising in many instances from the most trivial causes, may have produced a separation between them.

5. Because the provisions in the bill are not reciprocal, and on that account in this case, unjust; for if it be necessary and proper, when the husband shall refuse to cohabit with his wife, to subject him to the burdens and disabilities contained in the bill, it is

equally necessary and proper, in case the wife unjustifiably refuses to cohabit with her husband, that she should forfeit all right to dower of his estate after his decease.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 14, 1812. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act relative to the real estate of George Teeple, deceased,*" was before the Council, which adopted the following objections, reported by Chancellor Lansing, viz.:

Because the bill is totally useless, an adequate remedy being provided by the seventh section of the act entitled "*An act concerning idiots, lunatics and infant trustees,*" which authorizes infant trustees to convey trust estates under the discretion of the Court of Chancery; the vendor's heirs being by operation of law, trustees for the vendees.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *May* 26, 1812. Present—Governor Tompkins; Kent, Chief Justice; Spencer, Thompson, Van Ness and Yates, Justices.

A bill entitled "*An act to authorize the guardians of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom and Jane Bloom to execute a deed to James Gazley,*" was before the Council, which adopted the following objections, viz.:

Because the bill is totally useless, an adequate remedy being provided by the seventh section of the act entitled "*An act concerning idiots, lunatics and infant trustees,*" which authorizes infant trustees to convey trust estates under the discretion of the Court of Chancery; the vendor's heirs being, by operation of law, trustees for the vendees.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *June* 10, 1812. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Justice.

A bill entitled "*An act for the relief of the heirs of John Schultzs, deceased,*" was before the Council, which adopted the following objections, reported by Chancellor Lansing, viz.:

Because no reason appears in the bill why trustees are required to be appointed to sell the real estate whereof John Schultzs died seised, more than in any other case of infant heirs; and as the general law of the land vests the real estate of an ancestor in his heirs, it ought not to be divested without their consent, unless clearly for their benefit under peculiar circumstances duly suggested and assumed as the ground of legislative interposition.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *June* 15, 1812. Present—Governor Tompkins; Kent, Chief Justice; Van Ness, Justice.

A bill entitled "*An act relative to the real estate of Anthony Marvin, deceased,*" was before the Council, which adopted the following objections, viz.:

Because the bill is totally useless and corresponds in provision and principles with those in the bills entitled "*An act relative to the estate of George Teeple, deceased,*" and "*An act to authorize the guardian of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom and Jane Bloom to execute a deed to James Gazley,*" in both which cases the objections of the Council were held available, during the present session of the Honorable the Legislature, and to which cases the Council beg leave to refer.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *June 16, 1812.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness, Justice.

A bill entitled "*An act for the relief of Nancy Fairchild and her infant son,*" was before the Council, which adopted the following objections, viz.:

Because no reason appears in the bill why trustees are required to be appointed to sell the real estate whereof Erastus Fairchild died seised, more than in any other case of infant heirs; and as the general law of the land vests the real estate of an ancestor in his heirs, it ought not to be divested without their consent, unless clearly for their benefit, under peculiar circumstances, duly suggested and assumed as the ground of legislative interposition.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *June 19, 1812.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness, Justice.

A bill entitled "*An act incorporating trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable gospel purposes,*" was before the Council, which adopted the following objections, reported by Chancellor Lansing, viz.:

Because the bill is against the existing general restraint imposed by the wisdom of the Legislature on the devise of land to be held in mortmain in a case undistinguished from others of the same class.

Because the bill contains no limit as to amount, except the value of the estate of Alexander Proudfit, which may be increased by the benefactions of others to a dangerous excess, and applied to promote objects which it has been the uniform and salutary policy of the State to confine within reasonable and prescribed bounds.

Because the bill authorizes Alexander Proudfit, by a disposition of any part of his estate, by his will or otherwise, to trustees, to create a corporation of perpetual donation and to prescribe the objects, terms, limitation and application of the trust fund at his discretion, which is so wholly unprovisionary as to leave the

donor an unrestrained latitude of modification of the corporation, and the direction of its funds to any object comprehended within the comprehensive terms of pious and charitable gospel purposes.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *November 3, 1812.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Yates, Justices.

A bill entitled "*An act concerning the Judges of the Supreme Court,*" was before the Council, which adopted the following objections, reported by the Chancellor after being amended by it, viz. (the Governor dissenting from the first objection):

Because the Constitution having recognized the Supreme Court, in its organization and powers, as existing under the Colonial government, derived from those of the English common law courts of King's Bench, Common Pleas and Exchequer, in none of which courts, Colonial or English, have the number of the judges at one time exceeded *five*; that number seems to be the common law maximum, according to immemorial usage, not to be exceeded but by an express act of the Legislature, in conformity to the declaration of the Constitution, that such parts of the common law of England as comprised part of the law of the Colony should be and continue the law of the land, subject to such alterations and provisions as the Legislature of this State should from time to time make concerning the same.

Because the bill authorizes the honorable Senate and Assembly, by concurrent resolution, to direct the extension of the limitation of *five* judges to an indefinite number, thus evading the constitutional revision of this Council, and precluding it from expressing its opinion whether existing circumstances render it consistent with the public good to enlarge the number in a case in which this Council must constitutionally be presumed eminently qualified to form a correct judgment on the subject, as its constituent members are the executive and the judicial officers presiding in the superior courts of original jurisdiction in the State.

Because the bill, from its nature and object, is indefinitely prospective, and the powers granted by it incapable of being exhausted by successive concurrent resolutions; thus not only destroying the independence of the Council, by exposing it to be borne down by the introduction of new judges whenever its measures do not comport with the opinions of a majority of the members composing the honorable Senate and Assembly, but placing the Council in absolute subserviency to them, instead of forming the check the Constitution intended upon their proceedings.

Because, if the bill should become a law, and concurrent resolutions should be passed during the present session for the appointment of one or more judges, their numbers might be doubled in the next session, and subsequent members of the Legislature might increase them by the same means a hundred-fold, and thus the salutary efficacy of the judiciary might be virtually impaired, and the people of this State be burdened with a useless and intolerable expense, unsanctioned by the forms prescribed by the Constitution or by the constituted authorities, to whom collectively, each acting in the sphere assigned to it in the Constitution, has committed these important and incommunicable powers.

Because the bill provides not only for the increase of the judges indefinitely, in consequence of a resolution of the two houses of the Legislature, but provides, also, that judges so to be appointed shall receive the like compensation as the other judges, thereby enabling the two houses of the Legislature, at any future time, by concurrent resolutions, to make a permanent appropriation of money without the sanction of law.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *March 12, 1813.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Spencer, Thompson, Van Ness and Yates, Justices.

A bill entitled "*An act to amend an act entitled 'An act concerning the clerks of the Supreme Court of this State, and for other purposes,'*"

was before the Council, which adopted the following objections, reported by Chief Justice Kent, viz.:

Because, by the second section of the said bill, it is made the duty of the Supreme Court, by rules or orders, to compel the officers of the said court to pay to the Treasurer of this State, the moneys which may from time to time be due to the people of this State from the said officers for clerks' fees; thereby compelling the said court to collect the said debts due from the attorneys of the said court, by process of attachment and commitment as for a contempt, or by suspending the said attorneys from, or striking them off the roll, as for a misdemeanor in practice or other contempt of the court. The Council are not advised that the Supreme Court have any other mode by which they can cause the said debts to be collected, and they consider this mode not proper for the collection of debts due to the State, inasmuch as the party would be deprived of trial by jury, and be put to answer upon interrogatories; and inasmuch as this proceeding has never been applied to any other than cases of abuse and misdemeanor in practice, or other contempt committed against the privileges and authority of the courts.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, April 5, 1813. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer and Van Ness, Justices.

A bill entitled "*An act relative to the eastern branch of the Schoharie turnpike*," was before the Council, which adopted the following objections, reported by Justice Thompson, viz.:

Because, by the fourth section of the bill, the president and directors are authorized to assess, upon each share of the capital stock of said company, a tax not exceeding one dollar and fifty cents, without the consent of the stockholders, and annexes the penalty of forfeiture of the stock for non-payment of such assessment; thereby imposing upon the stockholders, against their will, the payment of money not authorized by the original act of

incorporation, and in violation of the rights created under such act, without any adequate public necessity appearing to justify the same.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, April 6, 1813. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act concerning joint tenants and tenants in tail, regulating descents and abolishing entails,*" was before the Council, which adopted the following objections, reported by Chief Justice Kent, viz.:

Because the bill is a transcript of a law passed the 23d of February, 1786, and is to be found in the first volume of the laws, page 44. That law has long been revered for the utility and the wisdom of its provisions. It is the *Magna Charta* of most of our estates by inheritance. It was left untouched in the revision of 1801, and to reenact it now, appears not only useless, but inconsistent with the ends of legislation, for by the first section of the bill there is a very formal abolition of estates in tail; which would imply that such estates still existed, when it is well known that they are already abolished, and have ceased to exist ever since the year 1786. The last section of the bill shows, in a strong point of light, the impropriety of reenacting that law, for the last section in the law of 1786 was confined to certain special cases of descents and conveyances, happening between the years 1782 and 1786, and the present bill makes the same provision for those absolute cases as if they were transactions of yesterday.

The only reason that appears for reenacting the law of 1786, was to incorporate into it the provisions in the sixth and seventh sections in this bill. But those provisions being of a local and temporary nature, were not necessary to have been reenacted, and especially to be attached to a law intended to establish, permanently, and as we trust, for ages to come, the title to real property by descent. Those provisions relate only to rights in the Military Tract, of certain soldiers who died before the 27th March, 1783.

The cases there alluded to are becoming obsolete by time and the statute of limitations.

The necessity of that provision was temporary and will soon be forgotten, whereas the law of descent is so vast and so constant in its operations that it ought not to be disturbed for any light or transient cause.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *April 8*, 1813. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer and Van Ness, Justices.

A bill entitled "*An act restraining bigamy*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the provision which subjects the person who shall marry the *husband or wife* of any other person, knowing at the same time that *such* husband or wife is living, to the penalties of felony, may, upon a literal construction, expose an innocent person to punishment, and the general rule is that penal laws are not to be extended by equity.

2. Because, though the offense probably intended to be provided against by the last clause in the said bill is of a milder type as to its influence on society than simple adultery, inasmuch as though equally immoral it is accompanied with an acknowledged respect for the common decencies of life, and destitute of every pretense of deception relating to the former marriage, it is made punishable as a felony, whilst common adultery can only be redressed by civil suit.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, April 9, 1813. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Yates and Van Ness, Justices.

A bill entitled "*An act to revive and amend the act entitled 'An act to incorporate the Harlaem Bridge Company, and for building another bridge across the Harlaem river,'*" was before the Council, which adopted the following objections, reported by Governor Tompkins, viz.:

1. Because it is not recited, nor does it otherwise appear, that the corporation established by the act entitled "An act to incorporate the Harlaem Bridge Company," passed March 25, 1808, have applied under their common seal for the alterations of their charter contained in this bill, although the rights and privileges of that company are materially changed and affected thereby.

2. Because the bill expressly prohibits the keeping of any ferry, or the building of any bridge across Harlaem river, from the county of New York to the county of Westchester, within three miles on either side of the present Harlaem bridge, and because the granting of an exclusive privilege to control the whole or principal part of the intercourse between York Island and the mainland across the navigable waters of Harlaem creek, without limitation as to time and by a bill so improvisory in essential points as the present, is dangerous in its tendency, and may, and probably will, be extremely detrimental to the public good at some future period.

3. Because, by the charter of the city of New York and the laws confirming and altering the same, the jurisdiction of the corporation of the said city extends to low water mark, on the Westchester side of Harlaem river; and by the same charter and laws, the right of granting and regulating ferries and bridges over the navigable waters within the precincts of the said corporation is granted to the mayor, aldermen and commonalty of the city of New York. The privilege granted by this bill infringes the charter rights of the said corporation of the city of New York, granted and secured to them as aforesaid.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 12, 1813. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer and Yates, Justices.

A bill entitled "*An act limiting the period of bringing claims and prosecutions against forfeited estates,*" was before the Council, which adopted the following objections, reported by Chief Justice Kent, viz.:

1. Because the bill appears to have been intended to be a revised bill, and as reenacting the statute of the 28th of March, 1797, to be found in the first volume of the laws, page 162; whereas that law had never been altered or amended, and was not within the purview of the general revision of the laws, and being a permanent statute affecting a very extensive portion of real estate, it is at least useless, and may be injurious to the stability of these rights to repeal and reenact it.

2. Because the case of dower of the widow of the person attainted or convicted, was not within the provision of the former act, since, according to the judicial construction of that act as settled by the judgment of the Supreme Court, it did not apply to the right or claim of dower in such case; and so long as that decision remains in force and unreversed it must be taken to be the true and just construction. And although it rests in the wisdom of the Legislature to limit the right of action in cases of dower, as well as in other cases, to five years, yet every new limitation should be prospective and not commence before the passing of the act; for otherwise, parties might be affected by such limitation without notice of it, and might lose their rights even while they were sleeping in security under existing laws.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

February 25, 1814, Chief Justice Kent, succeeded John Lansing, Jr., as Chancellor; Justice Smith Thompson succeeded Kent as Chief Justice; and Jonas Platt was appointed a Justice in place of Thompson.

ALBANY, *October 22, 1814.* Present—Governor Tompkins; Thompson, Chief Justice; Spencer, Justice.

A bill entitled "*An act concerning vessels in the port of New York,*" was before the Council, which adopted the following objections (amended from the original objections, reported by the Chancellor), viz.:

Because it gives to the corporation of New York a power to remove, at their discretion, at any time during the present war, and without any cause to be assigned, all or any private vessels in the harbor of New York, to any part of this State or of the State of New Jersey; and this removal to be at the risk and expense of the owner, for which expense the owner is made personally liable to suit. This is vesting in that corporation a most arbitrary and unprecedented control over the disposition of private property, without making the power to depend upon the existence of some absolute necessity. No doubt, when such public necessity exists, private property must be used and disposed of consistently with the public good. But upon the neglect or refusal of the owner to remove his vessel, his liability to pay the expense of the removal in this case ought not to extend beyond a lien upon the ship or vessel removed.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *October 24, 1814.* Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Yates, Justice.

A bill entitled "*An act to aid in the apprehension of deserters from the army and navy of the United States,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because the bill makes it lawful for any person whomsoever, if he shall have cause to suspect that any other person is a deserter from the army or navy of the United States, or from the army or militia of this State, to apprehend him without warrant, and take him before a justice of the peace. This is an arbitrary power and may be used and abused by the most worthless of men, upon a suspicion of which he is to be the judge, to the vexation and

oppression of the good people of this State. It is in direct violation of all the rights of personal liberty which we inherited from our ancestors, and which have been secured to us by the Constitution and law of the land. By the act of the 26th January, 1787, which was only a transcript of the provisions of Magna Charta, and is therefore to be regarded as a declaration of fundamental rights, "no citizen of this State shall be taken or imprisoned but by due process of law." And by the Constitution of the United States, it is declared that no person shall be deprived of liberty without due process of law, and that no warrants shall issue but upon probable cause, supported by oath or affirmation. All these sacred barriers are laid prostrate before that provision in this bill.

2. Because, when the person so to be arrested is brought before the justice, if it shall appear to the justice from any evidence whatever, that he has probable cause to suspect that such person is a deserter, he is required to cause him to be delivered to some military post, or to commit him to jail. This is a continuation of the same arbitrary and unconstitutional power. The justice is not bound to require any oath or affirmation to strengthen the suspicion. If, without any oath or any confession of the party, it shall appear to him "from any other evidence" that he has probable cause to suspect, he is bound absolutely to commit. What may be thought by any justice of the peace to be any other evidence, it would be impossible to say. Be it what it may, he has no discretion. He can take no bail. If he only suspects, then the person must be imprisoned, and handed over to military authority. Every citizen of this State will be liable at all times to the consequences of this train of suspicion, and to be placed, without due process of law, under the violence of some military commander. And if the person thus summarily disposed of shall be able so far to exert himself as to make it appear, as may well happen in numerous instances, that the suspicions are utterly groundless, there is no penalty imposed, and there is no action given to the injured party. The bill will render traveling insecure beyond the extent of a man's immediate neighbors.

3. Because it is made the duty of all sheriffs, deputies, constables, and all militia officers in this State, to apprehend every person "who shall from his appearance, dress, conversation or

otherwise, give probable cause to suspect that he is a deserter," and to take him before a justice, to be dealt with as in the former case.

4. Because the bill makes every civil and military officer who shall willfully neglect this duty of thus acting upon suspicion, guilty of a misdemeanor, and punishable by fine and imprisonment. To punish an officer thus criminally for refusing to invade the sanctity of personal liberty upon a suspicion of which he must be the judge, and which must strike different minds with different degrees of doubt, distrust and embarrassment, is giving to our criminal code a severity beyond example.

5. Because all non-commissioned officers and privates of the militia of this State are declared to be bound at all times to obey the orders of their superior officers in the discharge of their duty to arrest as aforesaid, under the like penalties of fine and imprisonment, and to be entitled to pay and rations while on such service. By this means, all the militia in their military character are made instruments in hunting down any citizen whomsoever who may have the misfortune, "from his appearance, conversation or otherwise," to fall under the suspicion of any militia officer.

The Senate passed the bill, but the Assembly refused; consequently it did not become a law.

ALBANY, April 18, 1815. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer, Yates and Platt, Justices.

A bill entitled "*An act for the payment of certain officers of government, and for other purposes*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, by the last section of the bill, a new apportionment and alterations are made in the senatorial districts, by increasing the number of Senators in the southern district, without any enlargement of the district, and by diminishing the number of Senators in the eastern district, and detaching from it the counties of Jefferson and St. Lawrence, and annexing them to the western

district. By a law of the present session of the Legislature, the districts have been altered, and according to the return of the last census, an apportionment of the Senators has been made in pursuance of the directions of the fourth article of the amendment to the Constitution. If the apportionment upon the southern district, which has already been made by law, was a true and just one (and no mistake appears or is alleged), then this new apportionment in granting an additional Senator to that district cannot be true and just, for there is not and cannot be any evidence of any increase of that district since the apportionment was made.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, April 5, 1816. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer and Platt, Justices.

A bill entitled "*An to incorporate the Bank of Niagara,*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because the bill is destitute of due and adequate provision to secure the punctual payment, upon demand, of the notes of the bank in lawful moneys of the United State. It is a fact of public notoriety, that the several incorporated banks within this State have, for some time past, refused to redeem their bills by paying the same in specie, and as this refusal has existed for upwards of a year past, though the country has, in that time, been in a state of peace, the evil grows more inveterate and alarming by the continuance of such refusal. This is the first instance of a bill for the erection of a new bank, since the existing banks have discontinued specie payments, and the occasion seems to require some new and effectual provision, beyond the mere increase of interest, to guard against the repetition of an evil not anticipated when the existing banks were incorporated. And it appears to the Council to be repugnant to the dictates of sound policy, to institute, under the present state of things, any new bank, unless the charter thereof contain some express and decided sense of the Legislature, that the duty must be indispensable to pay their notes, on demand,

in moneys that are or shall be a tender by law. And if the duty be indispensable, the privilege of issuing notes ought to be made to vest as a condition upon the performance of that duty, and to cease when the condition is not fulfilled.

The Senate refused to pass the bill; consequently it did not become a law.

July 1, 1817, De Witt Clinton succeeded Daniel D. Tompkins as Governor. [For Lieut.-Gov. John Tayler, see page 402].

ALBANY, *January 27*, 1818. Present—Governor Clinton; Kent, Chancellor; Thompson, Chief Justice; Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act for the relief of Eunice Chapman, and for other purposes*," was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

1. Because, by the first section of the bill, the marriage contract between the said Eunice Chapman and her husband, James Chapman, is not only declared to be dissolved, but it is declared that nothing in the act contained shall be construed to give the said James Chapman a right to marry during the lifetime of the said Eunice. The ground of this declaration, according to the recital of the bill, is that the said James Chapman hath deserted his wife, and joined the society called Shakers. The Council do not, by this objection, mean to maintain that, if a husband or wife deserts the other, and becomes a member of any religious sect, which considers and practically declares matrimonial connections to be sinful, unlawful and void, it would not be competent to render such an act a sufficient cause for divorce. Their objection to this section is, that the said James Chapman is by force of the act itself, and without the benefit of a judicial examination and trial, either as to his conduct or as to the practices of the Shakers, disqualified hereafter from exercising the natural right of contracting marriage when under no-existing marriage contract.

2. Because, by the second section of the bill, the Chancellor is not only authorized to dissolve the marriage contract whenever any

married person, being an inhabitant of this State, shall have joined the Society of Shakers, and remained with them for the term of three years; but it is also declared that it shall not be lawful for the person so joining the Shakers, after such dissolution of the marriage contract, to marry during the lifetime of the former husband or wife. The mere fact of joining the Society of Shakers, is thus made not only cause of divorce, but it is punished by disability to marry without any previous judicial inquiry or decision in respect to the acts or practices of that religious sect, or any adjudication upon them, as being inconsistent with the free exercise and enjoyment of that religious profession and worship secured by the Constitution.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *February* 27, 1818. Present—Governor Clinton; Kent, Chancellor; Thompson, Chief Justice; Van Ness, Yates and Platt, Justices.

A bill entitled "*An act for the relief of Eunice Chapman, and for other purposes,*" was before the Council, which adopted the following objections, reported by Justice Platt, viz.:

When a former bill for the relief of the same party was before the Council, it was not deemed necessary to go further into the consideration of the bill than to notice the two most obvious objections which then appeared to arise. The Council accordingly forbore to express any decided opinion, but reserved for more reflection whenever it should become necessary to declare their sense of the merits of the great questions now presented by this bill. These questions are now before them, and they have given to them all the careful and anxious consideration which belongs to the nature of the subject, the deference they owe to the opinion of the two houses of the Legislature, and the preëminent duty of discharging their trust according to the dictates of their judgment, on points which affect the fundamental principles of civil liberty. The Council therefore object to this bill.

1. Because, by the first section of the said bill, the marriage contract between the said Eunice Chapman and her husband, James Chapman, is declared to be "dissolved."

The institution of marriage, by legalizing and regulating sexual intercourse, has greatly multiplied the sources of rational enjoyment and exalted the human character. It is the only basis of domestic happiness, and the firm foundation of social order.

Regarding that institution, therefore, as the greatest of earthly blessings, the Council feel the solemnity of their obligation to guard it with scrupulous fidelity.

The recital of the bill states that "Eunice Chapman, in the year 1804, was lawfully married to James Chapman, by whom she had three children and with whom she lived until the year 1811, when the said James Chapman abandoned his said wife without leaving her any means of support, and soon after joined the Society of Shakers, in Niskayuna, in the county of Albany; that the said James Chapman, since joining the Society of Shakers, has taken from his wife her children, and now keeps them concealed from her, and insists that the marriage contract between him and his said wife is annulled, and that he is not bound to support her, and has publicly forbid all persons from harboring her, and declared that he would not be responsible for her debts."

In the opinion of the Council it would be unwise and unsafe to dissolve the contract of marriage for the causes stated in that recital.

The principal facts contained in the recital, and which are assigned as the reasons for the divorce, are:

(1.) That the husband has abandoned his wife without provision for her support, and refuses to pay any debts contracted by her;

(2.) That he has taken the children of that marriage into his own charge and custody; and

(3.) That he has joined the Society of Shakers.

As to the first ground, it does not appear, by the recital, whether the omission on the part of the husband to furnish necessities for his wife was a willful neglect of duty, or the effect of poverty and inability.

If such abandonment and neglect were willful, and without justifiable cause, then there is ample redress already provided for her

support, by the existing law entitled "An act concerning divorces, and for other purposes," passed the 13th of April, 1813, and if the neglect to maintain the wife was occasioned by her own misconduct, or by the inability of the husband, then such omission is no crime, and much less is it a just ground of divorce.

Upon the second ground, to wit, that the husband has taken his infant children under his own exclusive guardianship and control, the Council perceive nothing more than the exercise of a right which the law confers on every father, and whether the mode of exercising that parental authority, in this case, has been discreet and proper, or otherwise, does not appear. If this right has been abused, the remedy is already provided in the powers of the Chancellor, as superintending guardian of the rights of all infants.

The third and only other reason assigned for the divorce is, that the husband has become a member of the religious sect called Shakers.

It is notorious, and the Council therefore recognize the fact, that a distinguishing tenet of that society is that sexual intercourse, even between man and wife, is sinful and unlawful.

The profession of this article of faith may be a mere pretext in order to obtain an unqualified divorce as is granted by this bill, or if such profession be sincere to-day, the free conscience of the professor may renounce it to-morrow.

It is then no more than a present determination of the will in James Chapman not to cohabit with his wife, revocable at his own pleasure, and the Council can perceive no solid distinction between this case and the ordinary cases of willful abandonment, for which the existing laws have provided a suitable and adequate remedy by affording alimony to the wife from the estate of the delinquent husband.

If cruel treatment be complained of, the same existing law affords a shield by allowing a separation or divorce from bed and board so long as the cause exists.

If, then, maintenance or protection be the object desired in this case, the remedy is already provided, and if the mere privation of sexual intercourse is the real subject of complaint on the part of this woman, the Council feel constrained to remark that such an application is offensive to public decency.

Anxiously aware of the evils which threaten the dearest interests of society by increasing the causes or facility of divorces, the Council feel it to be their solemn and indispensable duty to oppose the dissolution of the marriage contract for any other than the single cause already provided for by the general law of this State.

Like all other great benefits, matrimony, in its universal application, produces many partial evils and much individual suffering; but the Council are firmly convinced that the sum of individual happiness, as well as the peace and order of society, requires that the nuptial tie should be indissoluble, except for the cause of adultery.

While the partial evils of indissoluble matrimony are sometimes witnessed and deplored, we ought to be consoled by the reflection that the peace and character of many thousands of families are preserved by the mutual forbearance and concessions between husband and wife, which are induced by the ever impressive consideration that the voluntary tie which bound them can never be dissolved.

History and experience unite to confirm the belief that the measure of purity or of profligacy in public morals, in all countries and under every form of government, is essentially graduated according to the degree of security and stability of the marriage contract.

2. The Council object to this bill because it absolutely and unconditionally dissolves the contract of marriage by statute authority, without any previous judicial inquiry and trial by jury as to the truth of the facts on which the divorce is founded.

This is the first instance of such an exercise of legislative power, not only since the adoption of our State Constitution, but since the foundation of the Colony of New York; and the Council deem this innovation to be unsound in principle and highly dangerous in its tendency.

In the recital of a statute entitled "An act directing a mode of trial, and allowing of divorces in cases of adultery," passed the 30th day of March, 1787, the Legislature of this State declared that it was more advisable for the Legislature to make some general provision in such cases, than to afford relief to individuals

upon their partial representations, without a just and constitutional trial of the facts.

With great respect the Council now advert to the principle thus early established in that recital; and firmly believe that the security of private rights, and the genius and spirit of the Constitution, require that this principle should be steadily maintained.

3. The Council object to this bill because they deem it inconsistent with the thirty-eighth article of the Constitution of this State, which ordains "that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind; provided that the liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State."

By the second section of the bill now under consideration, it is enacted "that in all cases where any husband or wife, having any child or children of the marriage, shall hereafter separate the one from the other, and shall or have attached him or herself to the said Shakers, and shall also take or have taken with him or her such child or children, being under age, the Chancellor or any Judge of the Supreme Court may award the charge and custody of such child or children to that parent who shall not have joined the said Society of Shakers."

By the existing general law of this State, applicable alike to all classes of men excepting slaves, the guardianship, custody and control of infant children belong exclusively to the *father*, who, by the same general law, is also entitled to the *service* of his infant children without accountability.

Under the provisions of this bill, the father may be divested of these precious and important rights, for the sole and avowed cause that he has become a member of the Society of Shakers.

The special regulation is in the nature of a penalty, and in the opinion of the Council, it is practically making a discrimination, and giving a preference, whereby the equality of civil rights (as between persons of different religious professions) is essentially impaired.

If the Legislature can constitutionally deprive a man of his parental rights, merely because he is a Shaker, they have an

equal right for the same cause to disfranchise him of every other privilege, or to banish him or even to put him to death. If the principle be admitted, it must rest in discretion alone how far it shall be carried in the measure of punishment.

There is no evidence that the Society of Shakers are guilty of any acts of licentiousness, or any practices inconsistent with the peace and safety of this State; and although we may lament what to us appear absurd errors in their religious creed, yet, so long as they preserve the character which they now possess for sobriety, industry and peaceful habits, the Council cannot regard them as having forfeited the protection secured by that article of the Constitution. To justify such an act of denunciation, the danger to "the peace and safety of this State" must be not merely speculative, remote and possible, but imminent and certain.

To condemn a religious tenet by legislative authority is to assume a power hitherto unknown in our statute book; and upon the most mature reflection, the Council are of opinion that it would be not only unprecedented in the annals of our State, but highly dangerous and alarming in its consequences.

In regard to the people called Shakers, the only possible apprehension of danger to the State on account of their religious faith and practice arises from the tenet that sexual intercourse is sinful; and it is worthy of remark that if they practice according to that belief, the very cause from which danger is apprehended, to wit, *celibacy*, is the very reason why that sect cannot be propagated to any dangerous extent. The supposed evil, therefore, carries along with it an effectual remedy.

The absurdity of that tenet is so plain and obvious as to prove an antidote and security against any serious danger of its prevalence; provided the excitement of persecution be not added to that of fanaticism. It may be pitied as a delusion, but it ought not to be regarded as a crime.

Notwithstanding the objections, the Legislature passed the bill into a law.

February 9, 1819, Ambrose Spencer was appointed Chief Justice in place of Smith Thompson; and on the 27th of March following, John Woodworth was appointed a Justice in place of Spencer.

ALBANY, *April 9, 1819.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice; Woodworth, Justice.

A bill entitled "*An act concerning the Courts of General Sessions of the Peace,*" was before the Council, which adopted the following objections, viz.:

Because, by the first section of the bill, any Court of General Sessions of the Peace may order a *nolle prosequi* to be entered upon any indictment found in such courts. By the existing law of the land, indictments for all crimes and misdemeanors whatsoever, may be found in the Courts of General Sessions of the Peace, though they have no jurisdiction to hear and determine indictments for offenses punishable with death or with imprisonment in the state prison for life; and the court, which cannot try and which therefore cannot be supposed to take any judicial consideration of such cases, ought not to be enabled in its discretion to defeat prosecutions for the same.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, *March 7, 1820.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice.

A bill entitled "*An act relative to the Roman Catholic Benevolent Society in the city of New York,*" was before the Council, which adopted the following objections, reported by Chancellor Kent, viz.:

Because, by the third section, a devise contained in the last will and testament of Robert Finn, late of the city of New York, deceased, of a house and lot of ground in the said city to the trustees of St. Patrick's Cathedral, and St. Peter's Church, in trust for the benefit of the Roman Catholic Orphan Asylum, is made valid and effectual in the law to vest all the estate of the said Robert Finn in the said trustees, according to the provisions of the will. The devise here alluded to is either valid or not valid in law. If valid, then the provision in the bill is entirely useless. If not valid, as the bill evidently supposes, then the house and lot, upon the death of the said Robert Finn, either descended to his

heirs at law, or escheated to the State for the want of competent heirs. In the latter case, the Legislature might have released, for the charitable uses declared in the will, all the right and title of the people of this State. But in the other case, of there being competent heirs (and that is the ground assumed by the bill), the Legislature cannot divest those heirs of the estate for any purpose whatever, without their consent, or without making them just compensation.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY, November 7, 1820. Present—Governor Clinton; Spencer, Chief Justice; Van Ness and Woodworth, Justices.

A bill entitled "*An act to authorize certain proceedings in Chancery to be done by certain county officers,*" was before the Council, which adopted the following objections, reported by Chancellor Kent (through the Governor, the Chancellor being absent), viz.:

1. Because it declares that the first judge of any county, being of the degree of solicitor or counselor of the Court of Chancery, shall, *ex officio*, be a master of and examiner in said court; whereas, by the twenty-fifth article of the Constitution, the first judges of the county courts in the several counties shall not at the same time hold any other office excepting that of Senator or delegate to Congress. The office of a master in Chancery is a public office well known to the law of the land when the Constitution was formed, and it has been a distinct and established office from time immemorial. Masters are said, by the common law, to be assistants to the Chancellor, and references are constantly made to them touching accounts and matters of practice, and they are officers of the court and subject to its orders. It is therefore an office within the meaning and spirit of the said prohibition; and the same objection applies to the office of examiner in Chancery.

2. Because masters in Chancery and examiners in Chancery are, by the bill, appointed by the Legislature; those offices, though they are by law distinct and definite, are to be conferred by statute upon certain individuals who now fill other offices of a totally distinct

and independent character, and for which only they are appointed. This new mode of appointing those officers is contrary to the twenty-third article of the Constitution, which declares that all officers, other than those who, by the Constitution, were directed to be otherwise appointed, shall be appointed by the Council of Appointment. Masters in Chancery and examiners in Chancery have, hitherto, been appointed by the Council, and purposely selected and duly commissioned for those trusts and regularly sworn into office.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *November 20, 1820.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice; Yates and Woodworth, Justices.

A bill entitled "*An act recommending a Convention of the people of this State,*" was before the Council, which adopted (by the casting vote of the Governor), the following objections, reported by Chancellor Kent, viz.:

1. Because the bill recommends to the citizens of this State to choose, by ballot, on the second Tuesday in February next, delegates to meet in Convention for the purpose of making such alterations in the Constitution of this State as they may deem proper, without having first taken the sense of the people whether such a Convention for such a general and unlimited revisal and alteration of the Constitution be in their judgment necessary or expedient.

There can be no doubt of the great and fundamental truth, that all free governments are founded on the authority of the people, and that they have at all times an indefeasible right to alter and reform the same as to their wisdom shall seem meet. The Constitution is the will of the people expressed in their original charter, and intended for the permanent protection and happiness of them and their posterity, and it is perfectly consonant to the republican theory, and to the declared sense and practice of this country, that it cannot be altered or changed in any degree without the expression of the same original will. It is worthy, therefore, of

great consideration, and may well be doubted whether it belongs to the ordinary Legislature, chosen only to make laws in pursuance of the provisions of the existing Constitution, to call a Convention, in the first instance, to revise, alter and perhaps remodel the whole fabric of the government, and before they have received a legitimate and full expression of the will of the people that such changes should be made. The difficulty of acceding to such a measure of reform, without the previous approbation of the constituents of the government, presses with peculiar force and with painful anxiety upon the Council of Revision, which was instituted for the express purpose of guarding the Constitution against the passage of laws "inconsistent with its spirit."

The Constitution of this State has been in operation upwards of forty years, and we have but one precedent on this subject, and that is the case of the Convention of 1801. But it is to be observed that the Convention of that year was called for two specific objects only, and with no other power or authority whatsoever. One of those objects was merely to determine the true construction of one of its articles and was not intended to alter or amend it, and the other was to reduce and limit the number of the Senators and members of Assembly.

The last was the single alteration proposed, and perhaps even with respect to that point it would have been more advisable that the previous sense of the people should have been taken. But there is no analogy between this single and cautious case, and the measure recommended by the present bill, which is not confined to any specific object of alteration or revisal, but submits the whole constitutional charter, with all its powers and provisions, however venerable they may have become by time, and valuable by experience, to unlimited revisal. The Council have no evidence before them, nor does any legitimate and authentic evidence exist, that the people of this State think it either wise or expedient that the entire Constitution should be revised and probed, and perhaps disturbed to its foundation.

The Council, therefore, think it the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the Constitution, that the question of a general revision of it should be submitted to the

people, in the first instance, to determine whether a Convention ought to be convened.

The declared sense of the American people throughout the United States, on this very point, cannot but be received with great respect and reverence, and it appears to be the almost universal will, expressed in their constitutional charters, that conventions to alter the Constitution shall not be called, at the instance of the Legislature, without the previous sanction of the people by whom those Constitutions were ordained.

The Constitution of Massachusetts was established in 1780, and contains the earliest provision on this subject. It provided that in the year 1795, the sense of the people should be taken on the necessity or expediency of revising the Constitution, and that if two-thirds of the votes of the people were in favor of such revision and amendment, the Legislature should provide for calling a Convention. The Convention now sitting in that State was called in consequence of a previous submission of such a question to the people.

The Constitution of South Carolina was ordained in 1790, and in that it is declared that no Convention should be called, unless by the concurrence of two-thirds of both branches of the Legislature; and the Constitution of Georgia, established in 1798, contains the same provision: thus showing that though the people be not previously consulted on the question, yet a more than ordinary caution and check upon such a measure was indispensable. The Constitution of Delaware, of 1792, declares very emphatically that no Convention shall be called but by the authority of the people, and that their sense shall be taken by a vote for or against a Convention, and that if a majority of all the citizens shall have voted for a Convention, the Legislature shall make provision for calling one. The same constitutional provision, that no Convention shall be called to alter or amend the Constitution until the sense of the people, by vote, shall have been previously taken, whether in their opinion there was a necessity or expediency for a revision of the Constitution, has been successfully adopted by the Constitution of New Hampshire in 1792; by the Constitution of Tennessee in 1796; by the Constitution of Kentucky in 1799; by the Constitution of Louisiana in 1812; by the Constitution of Indiana in

1816; by the Constitution of Mississippi in 1817; and by the Constitution of Illinois in 1818.

It would, as the Council apprehend, be impossible to produce higher and more respectable authority in favor of such a provision, and of its value and safety.

2. Because the bill contemplates an amended Constitution to be submitted to the people, to be adopted or rejected *in toto*, without prescribing any mode by which a discrimination may be made between such provisions as shall be deemed salutary, and such as shall be disapproved by the judgment of the people. If the people are competent to pass upon the entire amendments, of which there can be no doubt, they are equally competent to adopt such of them as they approve and to reject such as they disapprove; and this undoubted right of the people is the more important if the Convention is to be called in the first instance, without a previous consultation of the pure and original source of all legitimate authority. And it is worthy of consideration, and gives additional force to the expediency and fitness of a previous reference to the people, that time will be thereby given for more mature deliberation upon questions arising upon the Constitution, which are always momentous in their nature, and calculated to affect, not the present generation alone, but their distant posterity, and when the Legislature may probably have it in their power to avail themselves of a more just and accurate apportionment of the representation in the Convention, among the several counties of this State.

The above objections having been communicated the same day to the House, were referred to a select committee of the Assembly, to "consider and report thereon at the next meeting of the Legislature." The chairman of the said committee, Mr. Ulshoeffer, accordingly, at the next meeting, viz., on the 9th of January, 1821, made a report controverting the objections of the Council, but the Assembly refused to pass the bill; consequently it did not become a law.¹

¹ For Mr. Ulshoeffer's report and subsequent proceedings, see Appendix A, at the close of the work.

ALBANY, *March 23, 1821.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice; Yates and Woodworth, Justices.

A bill entitled "*An act authorizing the building of a toll bridge across the Esopus creek, in the town of Saugerties, in the county of Ulster, and for other purposes,*" was before the Council, which adopted the following objections, reported by Justice Woodworth, viz.:

1. Because the bill suspends, for a limited time, the rights, privileges and franchises heretofore granted by the Legislature, in and by the act entitled "*An act to incorporate the Ulster and Delaware First Branch Turnpike Company,*" passed March 9, 1810, and authorizes the commissioners of highways to direct the turnpike road, established by the said act, to be worked as a common highway, and erects a corporation to build a bridge across the Esopus creek, at the place where the bridge was built by the president and directors of the said turnpike company, allowing them at any time within five years to resume the turnpike, on making payment for all improvements that shall have been made.

If the Legislature rightfully possess the power of making the grant in question, it ought not to be exercised until the parties to be affected by the bill have an opportunity to contest the facts alleged, if they deem it expedient. The preamble states that it is represented to the Legislature that the said president, directors and company have become insolvent, that the road and bridge are in a ruinous state, and that the company refuse to make repairs; but for aught that appears, this representation is altogether *ex parte* and made without the knowledge of the corporation whose rights are suspended. This, of itself, presents a well-founded objection against the passage of the bill.

2. Because the right to dissolve the corporation does not appertain to the Legislature, unless a power for that purpose be reserved in the act of incorporation. The charter grants rights, privileges and franchises to individuals. It is admitted that there is a tacit or implied condition annexed to the grant, which, if broken, may create a forfeiture by reason of negligence or abuse of the powers granted. For this there is an adequate remedy by an information in nature of a writ of *quo warranto*, in which the question of for-

feiture may be tried, and if found against the corporation, its franchises may be resumed by the State.

This proceeding is according to the course of the common law, and is sanctioned as well by the principles as the uniform practice of our government. It is believed that the power assumed in the bill has been exercised by the judicial authority exclusively, since the establishment of the Constitution. The common law, which we adopted, points out the remedy, and it cannot be doubted that a departure from this salutary rule would be in derogation of private rights, and not within the legitimate powers of the Legislature.

The Legislature refused to pass the bill; consequently it did not become a law.

ALBANY. *March 31, 1821.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice; Yates and Woodworth, Justices.

A bill entitled "*An act to amend 'An act to perpetuate the testimony of witnesses in certain cases,' passed April 5, 1813.*" was before the Council, which adopted the following objections, reported by the Chancellor, viz.:

Because, by the first section of the bill, the provisions of the "act to perpetuate the testimony of witnesses in certain cases," are extended to all personal actions now pending, or which may hereafter be pending, in any court having cognizance thereof, within this State: subject, nevertheless, to all the limitations and provisions in that act contained.

In order to understand the operation of this bill, it is necessary to examine the provisions in the act referred to. By one of them it is declared that any person may make an affidavit before a judge of the Supreme Court, or before a judge of a Court of Common Pleas, being of the degree of counsel, or before a master in Chancery, that he is a party in a suit then pending or expected to be commenced, affecting the title to land, and that the testimony of a witness, to be named, is material and necessary to him in such suit; and the officer shall thereupon direct reasonable notice, not

less than fourteen days, to be given to the opposite party, of the time and place of examination of such witness, and the judge or master shall proceed at the time appointed, on due proof of the service of the notice, to take the deposition of the witness; and he shall include in such deposition any answer or declaration of the witness which shall be required to be included by either of the parties. The deposition is then to be filed and to be used upon trial in the cases therein specified, subject to objections to the competency of the witness or to the testimony.

This provision, in the act of 1813, was confined to the single case of title to land, and there appears to be greater reason for the provision in that case, and much less danger of abuse, than in the application of it to all personal actions. The provision is at best very loose and unchecked, and the Council apprehend that if it be extended to all cases whatsoever, it may produce great injustice to suitors, and lead to the corruption and abuse of testimony.

In the first place, it may take the opposite party entirely by surprise, and without any sufficient information to enable him to cross-examine the witness. A cause is pending in court after the return of the writ and before any declaration is filed. The process does not ordinarily state the cause of action, and the application to examine witnesses may be made before the cause of action is disclosed to the opposite party. The affidavit, to be made before the judge or master, is not required to disclose it, and the opposite party may be hastily summoned from one end of this extensive State to the other, on a notice of fourteen days, to cross-examine a witness before he has been informed of the particular cause of action against him. If he obeys the summons, he goes in ignorance of the nature of the case, and if he omits to attend, he suffers a witness to say what he pleases without any call for explanation.

Nor is there any check provided by the bill against taking the most improper testimony. The officer before whom the deposition is to be taken, has no discretion to judge of the fitness of the questions put to the witness. He is even specially required to include in the deposition any answer or declaration of the witness which either party may require to be inserted. By this means gross and scandalous matter, altogether impertinent, and having

no proper relation to the merits of the case, may be inserted and perpetuated upon record. This latitude of examination is the more liable to abuse when it is applied to that class of personal actions which are founded in tort, and in which the angry passions are apt to be engaged.

Another objection to the bill is, that the party applying to examine a witness is not required to show the reason or necessity for such a premature examination. He may require any witness in any case to be examined immediately on the first pendency of the suit, without stating that he is old and infirm or sick, or not likely to live, or about to leave the State. He is only to declare that the testimony of such a witness is material and necessary in the defense or prosecution of his suit, and he then will be entitled to examine any witness he pleases, and call out all the testimony in any case long before the trial, without showing any existing necessity for such a disclosure. It is a very dangerous anticipation of the regular trial of a cause in the presence of the court and the jury, and may be productive of fraud and perjury by affording an opportunity to tamper with witnesses, and by creating inducements fraudulently to counteract and unduly to supply the deficiencies of proof.

This mode of taking testimony, by depositions prior to any pleadings in the cause, tends greatly to impair the integrity of testimony and to undermine the safety and value of trial by jury. It can never be justified except upon the principle of extreme necessity, and no such necessity is required to be shown in this case; and this the Council apprehend to be a most serious objection to the bill. It is in direct hostility to the common law policy of *ore tenus* examinations in the presence of the court and jury, and if a witness thus prematurely and privately examined should afterwards attend the trial, his previous deposition would operate as a restraint upon sifting inquiries at the bar, and greatly check the investigation of truth. If a free and open inquiry should not be desirable to the witness or either party, nothing could be more easily managed than for the witness to be out of the State at the trial, and thereby give admission to his affidavit.

The necessity of such a material innovation upon the old and settled principles of our law, does not appear by the bill, and has

not occurred within the knowledge or experience of the Council. And innovations upon the old and established principles of law ought never to be made for the sake of theoretical improvements, but ought always to be preceded by inconveniences or evils actually experienced. As the law now stands, testimony can be very conveniently perpetuated, provided the necessity for it be first made to appear, and it must then be taken under those checks and safeguards which justice dictates. Testimony may be perpetuated by a bill in Chancery, but in such case the bill must state that the party is in danger of losing the testimony by delay, or that his right rests entirely upon the evidence of the witness sought to be examined. The bill must, likewise, particularly describe the nature of the right or demand to which the testimony is to be applied, so that the opposite party may know to what subject to point his inquiries. The courts of law will also allow testimony to be taken *de bene esse* in any cause pending before them, but no order would be obtained for such a premature examination, unless it was first shown to the satisfaction of the judge or commissioner, that there was a necessity for it by reason that the witness was old and infirm, or in danger of life or about to depart the State, and the judge would no doubt exercise a sound discretion in respect to the previous disclosure of the nature of the action or defense, and the fitness and pertinency of the proof. Under the present bill, a party may apply to a master in Chancery who has no judicial authority, and without showing any necessity, and without disclosing his case, may have any witness examined on any subject and may require anything he says to be taken down. The bill seems, therefore, to be destitute of all reasonable and customary check against surprise and imposition, and may prove extremely injurious to the pure and correct administration of justice.

The above objections were referred to a select committee of the Senate, who made a report through the chairman, Mr. Livingston, controverting the objections of the Council. The Senate, however, refused to pass the bill; consequently it did not become a law.

ALBANY, *January 2, 1822.* Present—Governor Clinton; Kent, Chancellor; Spencer, Chief Justice; Woodworth, Justice.

A bill entitled "*An act in addition to 'An act relative to the common lands of the freeholders and inhabitants of Harlaem,' passed March 28th, 1820,*" was before the Council, which adopted the following objections, reported by Chief Justice Spencer, viz.:

Because, by the act to which the bill is an amendment, the trustees therein named were authorized to sell the said common lands, and to execute conveyances therefor, and after deducting their expenses, with five per cent commissions, and after paying the assessments on said lands, and reimbursing the freeholders and inhabitants, they were required to pay, out of the residue of the moneys, certain specific sums, to the trustees of Harlaem library; to the trustees of the Hamilton school; to the trustees of such schools as may be established in the village of Harlaem and the village of Manhattanville, and to the trustees of such school as may be established on the said common lands. The surplus moneys in the hands of the trustees, after payment of these appropriations, were directed, by the said act, to be distributed by them among the several religious congregations of the said freeholders and inhabitants, in proportion to the number of church members in each; the respective proportions to be paid to their respective trustees, to be placed out at interest, and the yearly interest to be applied to the benefit of their respective religious establishments.

The bill provides, that in addition to the specific appropriations of the moneys arising from the sales of the said lands, mentioned in the act, the trustees shall be authorized to distribute and pay as follows: The sum of \$5,000 into the hands of the consistory of the Reformed Low Dutch Church, at Harlaem, to be invested by them in stock or bond and mortgage, and the yearly interest thereof to be applied to the support of the gospel in said place; the sum of \$1,000 to the first Episcopal church to be erected within the bounds of the township of Harlaem; and the sum of \$1,000 to be paid to, and equally divided between the respective trustees of the other religious congregations within the bounds of the said township at Harlaem.

The said last mentioned appropriations being, by the bill, declared to be in lieu and stead of the surplus mentioned in the third

section of said act; and that, if the proceeds of the land shall be insufficient to pay off all the appropriations made by the bill, a ratable deduction is directed to be made; and if there shall be a surplus beyond the appropriations, then a ratable addition is to be made to each appropriation.

The bill thus entirely alters and changes the distribution of the surplus moneys provided by the act, to the manifest prejudice of some portion of the inhabitants and freeholders of Harlaem. The bill contains no evidence, by recital or otherwise, either that the freeholders and inhabitants of Harlaem have assented to its enactment, or that they have had any notice of the intended application to the Legislature, to modify or change the provisions of the existing act.

A petition has been presented to the Legislature, purporting to be signed by the said trustees, and to which certain of the freeholders and inhabitants of Harlaem have signified their assent, for the enactment of a law, similar in its provisions to the present bill; but it does not appear by that petition that the freeholders and inhabitants of Harlaem have assented to the prayer of the petition, nor does the petition represent the fact to be so.

The act, to which the bill is an amendment, shows evidently, from its recitals, that it was passed conformably to the general sense and wishes of the freeholders and inhabitants of Harlaem. To subvert and destroy the provisions of an act thus passed, upon the application of a portion of the freeholders and inhabitants of Harlaem in conjunction with the trustees, appears to the Council to be unconstitutional, inasmuch as it impairs and destroys the obligation of a contract created by the act, and inasmuch as it violates a solemn compact, under which vested rights have been acquired, and is of dangerous tendency.

The Senate refused to pass the bill; consequently it did not become a law.

ALBANY, *March 29, 1822.* Present—Governor Clinton; Spencer, Chief Justice; Yates, Platt and Woodworth, Justices.

A bill entitled "*An act to authorize the trustees of Farmers' Hall Academy to be trustees of a common school district, and for other pur-*

passes," was before the Council, which adopted the following objections, viz.:

Because, by the ninth section of the seventh article of the amended Constitution of this State, and which section took effect from the last day of February last, it is provided that "the assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate." The bill alters and enlarges, in several particulars, the corporate rights and powers of the Farmers' Hall Academy, and yet it does not appear by the said bill that two-thirds of the members elected to each branch of the Legislature have assented to the passage thereof.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *March 29*, 1822. Present—Governor Clinton; Spencer, Chief Justice; Yates, Platt and Woodworth, Justices.

A bill entitled "*An act relative to the city of Schenectady*," was before the Council, which adopted the following objections, viz.:

Because, by the ninth section of the seventh article of the amended Constitution of this State, and which section took effect from the last day of February last, it is provided that "the assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate." The bill alters in several particulars the corporate power and rights of the city of Schenectady, and yet it does not appear by the said bill that two-thirds of the members elected to each branch of the Legislature have assented to the passage thereof.

The Assembly refused to pass the bill; consequently it did not become a law.

ALBANY, *March* 29, 1822. Present—Governor Clinton; Spencer, Chief Justice; Yates, Platt and Woodworth, Justices.

A bill entitled "*An act for rebuilding a bridge in the town of Minisink,*" was before the Council, which adopted the following objections, viz.:

Because, by the ninth section of the seventh article of the amended Constitution of this State, and which section took effect from the last day of February last, it is provided that "the assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate." The bill creates a body politic and corporate, and yet it does not appear by the said bill that two-thirds of the members elected to each branch of the Legislature have assented to the passage thereof.

The Assembly refused to pass the bill; consequently it did not become a law.

The Constitution of the State of New York, formed by the Convention of 1821, went into operation on the 1st day of January, 1823. It abolished the Council of Revision, and devolved the powers and duties vested in the Council by the Constitution of 1777, upon the Governor of the above State.

January 26, 1817, Alexander Clinton was appointed Clerk of the Council.

Lieutenant-Governor John Tayler acted as Governor from the 24th February 1817 (at which time Daniel D. Tompkins resigned his office of Governor, having been elected to the Vice-Presidency of the United States), to the first of July following, when De Witt Clinton was sworn into office as Governor.

Lieutenant-Governor Tayler became, consequently, a member of the Council, but as no vetoes were issued or objections offered, and not sanctioned by the Council, during the above period, his name does not appear in this work as being present at the meetings.

APPENDIX.

OBJECTIONS

REPORTED TO BUT NOT SANCTIONED BY THE COUNCIL, TO
BILLS WHICH CONSEQUENTLY BECAME LAWS.

CITY OF NEW YORK, *April 26, 1785.* Present—Governor Clinton; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the payment of the salaries of the several officers of government, and for other purposes therein mentioned,*" was before the Council. Chief Justice Morris reported the following objections, viz.:

For that, by the thirty-fifth section of the Constitution of this State, it is ordained, determined and declared "That such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the Colony of New York, as together did form the law of the said Colony, on the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the Legislature of this State shall from time to time make concerning the same." That, by an act of the Legislature of this State, while it was the Colony of New York, passed the 18th of October, 1701, entitled "An act for allowance to the representatives," it is enacted "that the wages or allowance to each representative of the people from the first day of that session, and forever, thereafter, should be six shillings current money of the then Province per diem, to commence from their coming out, till their return home; always provided it should not exceed eight days after their adjourning, proroguing or dissolving the same, and that each respective city and county throughout the then Province should bear and defray the charge of their

own representatives, which charge or allowance, as aforesaid, should be paid to the respective representatives by the treasurer of each respective city and county by warrant under the hand and seal of the mayor of the respective cities for the time being, and by warrant of any two justices of the peace to the treasurer of the respective counties, after the return of the said representatives from the Assembly, within ten days after the collecting of the public and necessary charges of each respective city and county:" which law was altered so far as it respected the quantum of the daily wages of the representatives of the city and county of Albany, the county of Suffolk and the county (then called) Tryon county; the one passed the first day of November, 1722; the other the 12th of July, 1729, and the other the 8th day of March, 1773—the first entitled "An act for paying the representatives of the city and county of Albany;" the second entitled "An act to ascertain the allowance to the representatives for the county of Suffolk, and for other purposes therein mentioned;" and the other entitled "An act for fixing the allowance to the representatives of the counties of Tryon and Cumberland;" which several laws remained in full force on the 19th day of April in the year 1775, and are still unrepealed, and therefore the provision in the said bill for the payment of the representatives of the people in Assembly, and not declaring it to be in satisfaction for their services, each, sixteen shillings per day out of the treasury of the State, and not from the respective treasuries of the respective cities and counties of the State, from which they ought in justice and by law to be paid, if intended not as abundant gratuity but as pay, is expressly so far against the said laws and contrary to the Constitution of this State, and provides the payment of sixteen shillings, with the six shillings, which is near fourfold the former provision. That if it is intended as an abundant gratuity over and above the allowance established by the before recited laws, and called for by the enhanced prices of every necessary of life, it is against the good of the people and impeaches the generosity of the Legislature that the same liberality of sentiment which they extend to themselves should not be extended to the other servants of the people (whose duties are more than doubly increased since the Revolution, some of whom have been greatly injured by the war) to enable them to

live with decency and reputation in their respective offices, and support those appearances that create respect to government and esteem in the people.

And further, to that clause of the bill, vacating the judgment obtained by Rosena Rush against Garret Ackerson, Isaac Coe and John Deronde: First. For that the subject matter of the said clause has no reference whatsoever to the title of the said bill or the general contents thereof; and,

Secondly. For that, the Legislature must have determined the matter upon partial evidence, unless the said Rosena Rush has been called in with her witnesses to be heard before the Legislature; and in such case the Legislature would be assuming to themselves judicial powers with the Legislature, which by the Constitution, for the safety of the good people of this State, are wisely separated: should the said Rosena Rush, and her witnesses not have been called in before the Legislature, the clause now objected to, must have been formed upon partial testimony, a precedent in its effect extremely dangerous to the rights and liberties of the good people of this State, and subversive of that equal justice which every citizen expects from the known law of the land. It is to be presumed that the court in which the said judgment was obtained have done their duty, and if a judgment by default that the defendants had not sufficient matter for their defense; or if they had neglected or omitted such defense, relying on the interposition now made by the Legislature, thereby making the Legislature the handmaid of their default: and thus in either case, if the judgment is right, unreputable to the State that the Legislature should interfere, if wrong, improper that they should be employed to remedy evils arising from individual neglect for individual advantage against the known law of the land, thereby tacitly impeaching the reputation of the court wherein the said judgment was obtained, raising the presumption that the court had done wrong, and that the interference of the highest authority of the State was necessary to correct its errors, and in its effect destroying the confidence of the people in the law of the land, and the tribunal established for the distribution of justice.

The Council adopted the objections to the bill, found in the body of the work, at page 278.

CITY OF NEW YORK, *April 3, 1786.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act for the relief of creditors against heirs, devisees, executors and administrators, and for proving wills respecting real estate,*" was before the Council. Chief Justice Morris reported the following objections, viz.:

For that by the first, second, third, fourth and fifth sections of it, subjecting the heirs and devisees to suits for the payment of the debts of their testator or intestate in all cases whatsoever, it is inconsistent with the public good.

1. Because by a collusion between the creditor and the executors or administrators, the personal estate in their hands, though sufficient for payment of the debts, may be wasted, and the heirs and devisees liable to the payment of the debts; for if a man dies intestate, leaving three children, infants, one by the first venter, two by a second, his second wife living, who will of course administer, she, with a view to serve her own children, to the prejudice of the child by the first venter, may pretend that there is little or no personal estate. The creditors, perhaps, to save themselves trouble, or with design to serve the widow and her children, knowing that the real estate that descends to the child by the first venter, is sufficient to secure them eventually, rest easy; and on the coming of this child to age, when the administratrix may be deceased, and the personal estate of the ancestor so wasted and disposed of that it cannot be come at, suits are brought against the first child, and all the real property is taken to pay the debts of the ancestor, which should have been paid by the administratrix, such child never having been in a capacity to guard against the evil.

2. Because, from the words, "who hath already died," in the first section, the bill retrospects, and may, in favor of some creditor who has not been as watchful as he should have been, ruin persons whose estate have been long since aliened.

3. Because, by the sixth, seventh and eighth sections of the said bill, a remedy is in future provided for the evils intended to be remedied, by the first, second, third, fourth and fifth sections, and therefore those sections are so far useless.

4. Because the sixth, seventh and eighth sections of the said bill are not only inconsistent with the public good, but against the spirit of the Constitution; for by the said sections a power is vested in the Judge of the Court of Probates, upon the suggestion of executors or administrators (who may be interested on a devastavit), to order a hearing before himself; and upon such hearing (without appeal) to order the sale of real estate; thereby depriving persons to whom such real estate is devised, or to whom it may descend, and who, in most instances, will be infants (the guard of whose interest has ever been a favorite object of our law), of their property, without trial by jury, and in the case of infants frequently without defense; thus instituting a new court, and vesting the Judge of the Court of Probates with new powers unknown to the Constitution, and which are to be exercised not according to the course of the common law.

CITY OF NEW YORK, *April 13, 1786.* Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for emitting the sum of £200,000, for the purposes therein mentioned,*" was before the Council. Chancellor Livingston reported the following objections, viz.:

Because, though a trading nation that receives a balance in specie, may, by the strictest and most attentive observance of public faith for a long series of years, support a limited paper emission, no such credit can be obtained by a nation that pays an annual balance. While paper circulates, it will purchase specie, and in proportion as it serves the purposes of a medium for the internal commerce, exchange and produce of the country will rise, and specie be emitted, till its scarcity enhances its price in paper, or in other words, till the real sinks below the nominal value. Thus, under circumstances similar to ours, an emission of paper; instead of increasing, will diminish the circulating medium; for as the money of a country represents its produce, so credit represents the specie of the country, and can only exist while one may, without difficulty, command the other. If the quantity of pro-

duce diminishes, money, the representative of it, depreciates; so if specie is either sent abroad or locked up, paper can only represent that which remains; and as the effect of paper, when the balance is against a country, is to drain it of its specie, its own value is daily diminishing, and with it the common medium of trade.

Because, whenever the bills of credit depreciate, the State is defrauded of its revenues, individuals of their debts, commerce languishes, or, instead of producing wealth, is the parent of want, till the State becomes bankrupt, and, after long struggles and much private and public distress, learns this useful lesson, that a medium of trade can only be procured by selling more than we buy; that this can be brought about but by industry and economy, by working cheaper than those with whom we deal, and not by laws that foster the idleness and dissipation which a long war has created.

Because the bill, under the appearance of relieving the distress of debtors, will in fact add to it. It does not enable them to discharge their debts unless their creditors commence suits. Thus, old debts will therefore accumulate by the annual addition of interest; and if the bills for which they mortgage their property depreciate, they will get into the hands of a few persons who can command specie; and when the day of payment arrives, the mortgagor will not only be compelled to discharge his original debt in specie but the amount of the bills of credit, and that, after having probably incurred considerable loss in passing them.

Because, however paper may be funded, its credit (supposing the causes before mentioned not to operate against it) must ultimately depend upon that of the government which can divert, with the same facility that it can create a fund; that to issue bills, and by the same law to declare that new promises shall be paid for old debts, and that the interest of the first lender shall be postponed to that of the last borrower, though the first has much and the last no peculiar merit to plead, is in the same instant to solicit and to destroy credit.

Because, by the fifty-second clause of the bill, certificates are to be given for the remaining four-fifths of the interest due on certificates loaned to the State, on or before the first day of May, which will be in the year 1787; when, agreeably to the calcula-

tions on which £50,000 are appropriated for the payment of the interest due on the 1st January, 1785, the remaining four-fifths must exceed £200,000. As no provision has been made for raising any part of this large sum, nor is it probable that in the course of one year, besides providing for the support of our own and the Federal Government, so large a sum can possibly be raised, particularly after the appropriations that have been made for the redemption of the new emission, it must be apparent that one of the most important engagements it contains will not be complied with, an observation that gives more weight to the last objection.

Because, by rendering the bills of credit receivable at the treasury for the most productive revenues of the State, it leaves us without other means of complying with federal requisitions, than by a collection of some of the taxes or debts of the State in specie: and yet no such determination can be made without depreciating the paper and establishing different rules for the discharge of debts due to private persons and the public; so that, should the bill be enacted into a law, it will leave no other alternative but that of violating the national faith pledged to the confederated States, or that of doing injustice to individuals among our citizens.

Because the exertions of a State in critical moments depend upon its credit: and this credit can only be maintained by availing itself of every favorable opportunity to discharge debts incurred in the day of danger; that to add, therefore, to this debt when the State is at peace and has no public demand for money is directly to contradict the most obvious principles of national policy.

Because the bill supposes a power in the State to establish the credit of this paper, and yet applies only a small proportion thereof to pay the debts already incurred on the faith of government, but mortgages the most productive funds of the State for the redemption of the new paper, and thus (discouraging virtuous and patriotic exertions) postpones the interest of those creditors who have lent their support to the State while struggling with adversity, to the private advantage of others who may be willing to engage in the new loan.

Because no provision is made for enabling the inhabitants of the county of Columbia to borrow on the same terms with the other citizens of the State. If the being able to take up public

money on loan is advantageous, they should be permitted to avail themselves of that advantage. If it is disadvantageous, the bill should not pass into a law.

CITY OF NEW YORK, April 14, 1786. Present—Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Yates and Hobart, Justices.

The bill entitled "*An act for emitting the sum of £200,000 in bills of credit, for the purposes therein mentioned,*" being still before the Council, Justice Hobart reported the following objections (as a substitute for those immediately preceding, of Chancellor Livingston), viz.:

Because, by the fifty-eighth section, it is enacted "that the bills of credit to be emitted shall be a legal tender in all cases where any suit is or shall be brought or commenced for any debt or damages, and the costs of suit in any stage of the proceedings thereof," thus enabling a man to pay his debts in bills of credit, before the credit of those bills is established, and it is ascertained that the credit or will receive a valuable consideration in return for what he had advanced to the debtor, which would prove an unwarrantable interference in private contracts.

The supreme Legislature of the State, it is true, may, by an act of sovereign power, annihilate at once all the debts that are due in the State, without any consideration; but this cannot destroy the justice of the demand, nor weaken the force of the obligation *in foro conscientiae*. So may they by the same power declare that a piece of gold, of leather or paper shall be received in satisfaction for a debt contracted by the delivery of an ox or horse; but this cannot be deemed an honest payment unless the creditor can replace the ox or the horse he sold, with the gold the leather or the paper which he has been obliged to receive.

Money, considered as a medium of commerce, has in itself no intrinsic value. The amount of the annual income of any person or nation cannot be estimated by the number of pieces of money which are received in the course of a year, but by the quantity of the comforts, conveniences and necessities of life which can be

procured with those pieces of money. Their value does not consist in themselves, but in the articles which people in general will exchange for them; so that money, whatever may be the materials of which it may be composed, is only the representative of wealth.

Gold and silver being scarce metals, possessed of qualities which facilitate the discovery of counterfeits, and serving alternately for a medium of commerce or an article of exportation, were well calculated to force themselves into the universal circulation they have obtained, notwithstanding their relative value with respect to each other differs very much in different countries; and with respect to the necessaries of life in different ages, and sometimes from a coincidence of circumstances, in the course of a few years, in the same country. Hence, appears the injustice of those laws which, in some nations, establish the coins made of those metals as a tender in payment of debts.

Nothing could have been a more flagrant violation of the principles of justice and common sense, than to have obliged a man in Queens county, in the year 1779, to receive ten Spanish milled dollars in payment for a cow which he had sold three years before, when it would have taken seventy or eighty such dollars to have replaced to him a cow of equal goodness.

If, then, it would be repugnant to justice to oblige a creditor to receive a given sum of coined gold or silver in payment of a debt, it would be unspeakably more so to oblige him to receive bills of credit, which, in their best condition, are but the representatives of solid coin; and in the present instance it cannot be known that they will obtain that credit till the experiment has been tried; when, should a depreciation ensue, many acts of injustice will have taken place before it can be possible for the Legislature to interpose to prevent the increasing evils.

The bills proposed to be issued will, by virtue of this clause, obtain a currency from one debtor to another; but, in the course of circulation, they must fall into the hands of some persons who, instead of paying debts, may want to purchase the necessaries of life with them; and, unless they will answer this as well as the other purpose, unless people will part with their superfluous commodities in order to obtain them as readily as pay their debts

with them, they will not answer the purpose of a circulating medium, much less of a tender for the payment of debts.

Nothing can, in justice and good conscience, serve for the payment of a debt, unless it be of equal value with the article for which the debt was contracted. In this reciprocity of value consists the validity of all contracts which have been heretofore entered into; and to authorize one of the parties to discharge the obligations of those contracts with bills of credit, while there is a possibility that those bills will not enable the other to purchase commodities of equal value with those with which he parted at the time the contract was made, will be to establish iniquity by law.

CITY OF NEW YORK, *April* 15, 1786. Present—Governor Clinton; Morris, Chief Justice; Yates and Hobart, Justices.

The bill entitled "*An act for emitting the sum of £200,000 in bills of credit, for the purposes therein mentioned,*" being still before the Council, Chief Justice Morris reported the following objections (as a substitute to those of Justice Hobart and Chancellor Livingston), viz.:

Because, to emit further paper securities upon the credit of the State, until those already in circulation are redeemed or appreciated to their full value, is, in effect, increasing the debt of the State to the immediate prejudice of its present creditors. The present State securities are the paper engagements of the State to pay in money the sums mentioned in them. The bills of credit to be emitted under this bill, will be no more (though they have a different name), and will increase our evils by bringing more of the same paper to that market (and which cannot be carried to any other), when the other is selling for one-fourth of its value. The making those bills receivable in the custom house and treasury, as money, of which they are only the representatives, may have a tendency in some measure to preserve their credit; but it is against the interest and derogatory to the credit of the State, that their most productive funds should stand engaged for the payment of a new and voluntary debt gone into without consideration, when their old creditors, from whom they have had valuable consideration in

the hour of necessity, and for whose benefit those funds should in some measure be applied, are if not made worse, at least not bettered.

If those funds are sufficient to preserve the credit of the bills to be emitted under this bill, they are equally sufficient to appreciate the paper securities now in circulation, in proportion as £200,000 bears to the whole of them.

The Council further object to the fifty-eighth section of the said bill, enacting "that the bills of credit to be emitted shall be a legal tender in all cases where any suit is or shall be commenced for any debt or damages; and the costs of suit in any stage of the proceedings thereof."

Because, by the law to compel the receipt of paper at the value the Legislature please to fix it, and which must in every other instance receive its value from the will of the users, in the place and stead of gold and silver; should the money depreciate, it will be by law stripping the citizen of his property contrary to the spirit of the Constitution, and will be working iniquity by the aid of law. This clause will put an end to all credit in the State, which will be extremely injurious to our commerce and against the interest of the people.

Mr. Chancellor Livingston then offered the following objections, as a substitute for those reported by him on the thirteenth instant, viz.:

1. Because the fifty-eighth clause of the bill enacts "that the bills of credit shall be a legal tender in all cases where any suit shall be brought or commenced for any debt or damages and the costs of suit," thereby interfering in private contracts, and imposing on creditors the necessity of accepting State securities (for as such the bills of credit must be viewed) in lieu of specie, which has a known intrinsic value, while the value of the new emitted paper must rest on opinion only.

2. Because, though the clause seems designed only to enable the debtor to discharge the debt in paper, in case of his being sued by the creditor, and thus to leave it optional with the creditor to receive such paper, or by delaying to prosecute for it, to wait till the bills of credit have an established value or are out of circula-

tion; yet, in many cases, it compels him to receive it or lose his debt on all simple contract debts, bills of exchange and notes of hand, which must, by the laws, be prosecuted within a limited time, or are rendered void.

3. Because laws which change or lessen the creditor's security and free one set of men from their contracts, to the prejudice of another, are not only contrary to that spirit of equal justice which prevails in free governments, but are productive of the worst of evils by loosing the bonds of society and causing a general corruption of manners.

ALBANY, *March 5, 1790.* Present—Governor Clinton; Livingston, Chancellor; Yates and Hobart, Justices.

The bill entitled "*An act appointing commissioners with power to declare the consent of the Legislature of this State, that a certain territory within the jurisdiction thereof should be formed or erected into a new State,*" was before the Council. The Governor reported the following objections to the bill, as being against the Constitution of this State and the United States, viz.:

1. Because the said bill is calculated, and should it become a law, may have the effect to take the property of individuals for the benefit of the public without recompense, in direct violation of the principle recognized in the seventh article of the amendments to the Constitution of the United States, so lately ratified by the Legislature of this State, which expressly declares "that private property shall not be taken for public use without just compensation."

2. Because this bill confers discretionary powers upon the Commissioners therein named, to destroy the rights and extinguish the claims of the citizens of this and other States, to lands within a certain district. The vacating of charters and patents, which are among the most solemn rights, by the mere force of legislative authority, is at all times a high-handed stretch of power, and utterly incompatible with the idea of a just and more especially of a free republican government, rendering the rights and titles of citizens uncertain and insecure, depriving them of the benefit of the ordinary course of justice, and leaving them dependent on

the mere will of the Legislature, to the destruction of all confidence in that government to which they submitted for the great end of protection, as well in the enjoyment of their property as of their lives and liberties. And this bill is rendered the more exceptionable by a delegation of this extraordinary power to individuals, and giving to their acts the force and validity of law without being subject to the correction or examination of the Legislature.

3. Because, by this bill, the rights of citizens under charters and letters patent, which may be ranked among the highest species of contracts, may not only be impaired, but extinguished, in direct violation of the tenth section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

4. Because, if the district of Vermont should be erected into a distinct State, and received into the Union without any further intervention of this State than what is required by the Constitution of the United States, the proprietors of land would not be deprived of their rights by this change of jurisdiction, but by the operation of this bill their claims may be extinguished and they divested of the privileges secured to them as citizens of the United States, by the second section of the third article of the Constitution, which extends the powers of the judiciary to cases of this nature.

5. Because the acts of the commissioners, under this bill (should it pass into a law), will either have the effect of extinguishing the grants under New York and debarring the claimants of any remedy in the Federal courts, or they will not. In the last case, the act would be a deception upon the people of the district styled Vermont, unworthy of government, and be far from promoting the peace and happiness of the United States in general, or of this State in particular, which the bill has in contemplation. In the first case, it is to be observed, that the judicial power of the Union is, by the second section of the third article of the Constitution, extended to controversies between a State and citizens of another State; and it is a well known fact, that citizens of other States claim lands in the said district under patents granted by New York. If, then, such citizens can have their remedy against this State in the

Federal courts, and command a compensation for the injury received by annulling their grants, would it not be most unjust that our own citizens should be precluded, merely because they live under our immediate protection.

6. Because, although the bill may produce the effect of extinguishing the claims of the New York patentees, where they are citizens of the State, and bound by its laws, yet this cannot be urged with respect to citizens of another State, who may maintain their suit against claimants under Vermont in a Federal court, and recover just compensation; while our citizens will be deprived of redress, not because they have less justice on their side, but because this bill, in its operation, may have precluded them from any remedy.

CITY OF NEW YORK, *January 14, 1793.* Present—Governor Clinton; Livingston, Chancellor; Yates, Chief Justice; Hobart and Lewis, Justices.

A bill entitled "*An act for prescribing the times, places and manner of holding elections for Senators to represent this State in the Senate of the Congress of the United States of America,*" was before the Council. Chancellor Livingston reported the following objections, viz.:

1. Because the Constitution of the United States directs that the Senators be chosen from each State by the Legislature thereof. If, by the Legislature is intended the members of the two houses not acting in their legislative capacity, no law is necessary to prescribe the mode of election, concurrent resolutions extending in this case as well to the mode of election as to the choice of persons. And the bill, as far as it goes, operates as a restriction upon the constitutional rights of the two houses. If the Legislature are only known in their legislative capacity, the Senators can constitutionally be appointed by law only, and no considerations arising from inconvenience will justify a deviation from the Constitution of the United States.

2. Because the clause of the Constitution of this State, to which the bill refers, declares that in case the persons nominated for delegates shall not be on the lists both of the Senate and Assembly, that then they shall be elected by joint ballot, &c.; by which

means, if the same rule shall be adopted for the election of Senators, it may sometimes happen that Senators may be chosen who shall not have one vote from the Senate, and at others by the Senate in concurrence with a minority of the House of Assembly, both of which elections would be directly repugnant to the spirit and letter of the Federal Constitution, since by that the Legislature are to elect, and the Assembly without the voice of the Senate can in no sense be termed the Legislature, nor can that word be applied with more propriety to the Senate, acting in concurrence with a minority of the House of Assembly, nor to either, without a submission of their bills to the Council of Revision; and the rather, as by the spirit of the Constitution, the Senators are the representatives of the Government of the States, as the House of Representatives is of the people of the United States, which shows the peculiar propriety of confining the choice of the first to the State as a State, and not to the members of either or both houses in their individual capacity.

CITY OF NEW YORK, *March 11, 1796.* Present—Governor Jay; Livingston, Chancellor; Lewis and Benson, Justices.

A bill entitled "*An act to authorize the raising moneys, by tax, in the city and county of New York, for defraying the public expenses,*" was before the Council. Chancellor Livingston reported the following objections, viz.:

1. Because, in the first and second clauses of the bill, it directs a tax on the estate, real and personal, of the freeholders and inhabitants within the said city and county, &c. If the word "and" is to be taken conjunctively, then no freehold or real property can be rated or taxed unless the proprietor is also an inhabitant, or no inhabitant be taxed unless he is also a freeholder, both of which constructions would work too many inconveniences to have been within the intention of the Legislature.

If the word "and" is taken disjunctively, then the personal estate of a freeholder may be rated, though he is not an inhabitant, and the personal property is always attached to the person and

must be taxed where the owner inhabits, and thus induce a double tax on some of the inhabitants of the State.

2. Because the second enacting clause of the bill directs that "the said several sums of money shall be rated and assessed according to the estate of each respective person so to be taxed," without affording any rule by which such personal assessment is to be made, or imposing any check upon this unbounded power: no notice being directed to be given to the person taxed of the amount of his tax till he is called upon for payment; no specification of the articles taxed, other than the general division required by the act entitled "An act for the more effectual collection of taxes in the city and county of New York," into real and personal property, and no opportunity being afforded to persons who may be improperly taxed of showing the injustice of the assessment; no tribunal to which they can appeal from ignorance, corruption or malice in the assessors; no punishment annexed to their misconduct be it ever so flagrant, nor any limitation whatever set to their power, though this power is so exorbitant as to violate the first principles of Free Governments, which should attentively guard the property of every citizen against arbitrary impositions, and afford tribunals to hear and determine every oppression under which a citizen may labor. The spirit of such Governments requires that the laws should accurately define the extent of every duty they create, of every right they abridge, that the citizens may know how to fulfill their duties and defend their rights; whereas this bill leaves the definition of their duty in this respect to the arbitrary discretion of the assessors, and takes from them all legal modes of defending one of their most important rights, the right of property.

3. Because there is no provision in the bill to guard any person who may have two places of residence, and may occasionally reside at either, from being rated in both for his personal property, an oppression under which it is well known some of the citizens of this State have labored.

The objections were amended so as to read as in the body of the work, page

ALBANY, *February 16, 1797.* Present — Governor Jay; Yates, Chief Justice; Hobart, Lansing and Benson, Justices.

A bill entitled "*An act to render the funds of this State more productive of revenue,*" was before the Council. Judge Lansing reported the following objections, viz.:

1. Because the bill in its whole scope bears evident marks of an intent to impose a restraint as well on the indiscreet use as the palpable abuse of the powers intended to be conferred on the president, directors and company of the Bank of New York; a restraint obviously dictated by prudence, from the consideration of the important public interests intended to be confided to the management of the directors of the bank; but it is inadequate to effect the former of those salutary purposes, the fixed stock of the bank arising from the acquisition of the stocks of the State not being capable of affording an active capital to be used in the operations of the bank unless previously converted into money, and thus the provision that the total amount of the debts which the bank may at any time owe, by contract, over and above the moneys then actually in the bank, may exceed the amount to which it is at present restricted in the proportion which the aggregate sum of the nominal value of the stocks added to \$1,000,000 shall exceed the sum of \$1,000,000, extends the ability of the bank to contract debts to the amount of upwards of \$8,000,000 on an active capital of less than \$1,000,000, and thus unduly increases the legal ability of the bank to contract debts to an amount inordinately disproportionate to its means of prompt payment.

2. Because, whenever the exigencies of the bank may require a resort to the auxiliary fund arising from the sale of the stocks, it will probably depreciate in proportion to the pressure of the emergency which requires the conversion of such stocks into money; as by increasing the amount of the stocks at any time in market beyond the existing demand, the price must unavoidably be reduced, and thus the security of the State diminished in proportion to the loss arising from that circumstance.

3. Because the introduction of the Comptroller or Treasurer into the direction, and the injunctions on him to report the state of the bank, in certain cases, to the person administering the government cannot repress any imprudence of the directors, as to the emission

of paper until their debts exceed the limitation contained in the bill, the sense of the Legislature being conveyed by a very strong implication that to contract debts to any amount within that limitation would not be improper or imprudent.

4. Because the bill is calculated to increase the quantity of circulating paper, the abundance of which is already an evil of great magnitude.

ALBANY, *March 30, 1798.* Present—Governor Jay; Lansing, Chief Justice; Lewis and Benson, Justices.

A bill entitled "*An act to amend the act entitled 'An act for suppressing immorality,'*" passed the 23d of February, 1788, was before the Council. Judge Benson reported objections (found in body of the work, page 316), and Judge Lewis reported the following objections in addition thereto, viz.:

1. Because the provisions of said bill militate against the thirty-eighth section of the Constitution by operating a preference to that class of Christians who keep the first day of the week as holy time, and an oppression of those who from a religious sense of duty are observers of another day.

2. Because they think it unwise ever by law to impose obligations on the consciences of men in matters of opinion, such laws being ever disregarded or imperfectly executed, and having a consequent tendency to weaken the hands of government.

3. Because it has a tendency to increase offenses by restraining *acts* the legality or immorality of which must ever depend on the opinions and consciences of individuals.

4. Because it in some measure prescribes the manner of keeping the Sabbath, which even among the most pious has varied in almost every age, and is at this day very different among different sects.

5. Because they believe that instead of improving morals, it will have a contrary tendency, by exacting doubts of the divinity of a religion which requires the aid of government for its support.

And the question being put whether the Council do agree to the said additional objections, it passed in the negative, whereupon Judge Lewis moved that the said additional objections should be

inserted in the minutes, and the question being put thereon it passed in the affirmative. The Council then adopted the objections as reported by Judge Benson.

ALBANY, *April 2, 1799.* Present—Governor Jay; Livingston, Chancellor; Lansing, Chief Justice; Benson, Justice.

A bill entitled "*An act for supplying the city of New York with pure and wholesome water,*" was before the Council. The Chief Justice reported the following objections, viz.:

Because the bill creates a corporation with a capital of \$2,000,000 vested with the unusual power to divert its surplus capital to the purchase of public or other stock, "or any other moneyed transactions or operations not inconsistent with the Constitution and laws of this State or of the United States," and which surplus may be applied to the purposes of trade or any other purpose which the very comprehensive terms in which this clause is conceived may warrant. This, in the opinion of the Council, as a novel experiment, the result whereof, as to its influence on the community, must be merely speculative and uncertain, peculiarly requires the application of the policy which has heretofore uniformly obtained; that the powers of corporations relative to their money operations, should be of limited instead of perpetual duration.

ALBANY, *March 8, 1803.* Present—Governor Clinton; Kent, Livingston and Thompson, Justices.

A bill entitled "*An act to increase the number of wards in the city of New York, and equalize the same,*" was before the Council. Justice Kent reported the following objections, viz.:

That the bill contains certain alterations in the charter of the said city, and it not appearing in the said bill, or otherwise, that the same are made upon the application or with the consent of the mayor, aldermen and commonalty of the said city, it is to be intended that those alterations are made without such application

or consent. It appears therefore improper that the said bill should become a law.

1. Because the bill declares that from and after the first day of October next, the city of New York shall be divided into nine wards, and that the electors of each ward shall annually choose one alderman and one assistant, and that not less than the mayor or recorder and five aldermen and five assistants shall be a quorum of the common council of said city, or be competent to do any business; whereas, by the charter of the said city, it is granted and declared that the same shall forever thereafter be and remain divided into seven wards, and that forever thereafter there shall be one mayor, one recorder, seven aldermen and seven assistants, and that the mayor or recorder with four or more aldermen, and four or more assistants, shall be forever thereafter called the common council, and that the said common council, or the major part of them, shall be invested with certain powers and authorities.

2. Because this alteration of the said charter without the consent of the mayor, aldermen and commonalty, is a breach of the faith of government pledged to the said corporation; for by the charter the Crown covenants with the mayor, aldermen and commonalty of the said city, and their successors that they shall hold and enjoy all the rights, privileges, powers and immunities by the charter mentioned and granted, and that the same shall be valid and effectual, notwithstanding any defect in reciting or mentioning such rights or any other defect or imperfection whatsoever, and notwithstanding any statute of Parliament, or any act of Assembly; and that if any fault or imperfection in time to come should be found in the same, that the Crown will make any other grant for the better giving, confirming and enjoying the premises and every part thereof, when it shall be desired by the same mayor, aldermen and commonalty, or their successors: and by an act of Assembly passed the 14th October, 1732, the said charter is declared to be valid and effectual, and it is enacted that the said mayor, aldermen and commonalty, and their successors shall forever thereafter hold and enjoy all the rights, franchises, powers and privileges so as aforesaid granted: and by the thirty-sixth article of the Constitution of this State, the said charter, as well as

all other charters and grants made prior to the 14th October, 1775, is saved and confirmed.

3. Because, if the alterations contained in the said bill can be made without the consent of the corporation, the charter may with equal right be altered in other particulars, and may even be destroyed whenever it shall seem meet to the Legislature. And not only this, but every other charter, and every grant from government can be altered or resumed at pleasure, for they all rest upon the same foundation. The bill therefore establishes a dangerous precedent. It involves a principle which may lead to the destruction of all the chartered rights and property of the people of this State, for rights and property cease to be of value when the faith of compact does not secure them, and they are to be held at the will of any man or any set of men whomsoever.

ALBANY, *April* 4, 1804. Present—Governor Clinton; Lewis, Chief Justice; Kent, Livingston, Thompson and Spencer, Justices.

A bill entitled "*An act to restrain unincorporated banking associations*," was before the Council. Justice Livingston reported the following objections, viz.:

That it is inconsistent with the spirit of the Constitution and the public good, that the said bill should become a law for the following reasons:

1. Because it may be doubted whether any company of merchants, although consisting of only two persons, can employ any part of their capital as occasion may offer in making loans by discounting notes, a business which may oftentimes be pursued to the advantage of commerce and to individual benefit.

2. As the Mercantile Company and Merchants' Bank mentioned in the bill were formed for the purpose of banking, when it was lawful for the respective members thereof so to do, nothing but the most manifest danger of some great public evils can justify a legislative suppression of them. It is the duty of government to extend protection and security to every citizen engaged in lawful business, but if companies not only sanctioned by precedents, but

hitherto deemed beneficial may be thus dissolved without urgent necessity, or on the mere suggestion of possible mischiefs, the spirit of commercial enterprise will be checked, and every species of property rendered insecure; so far from any great dangers being to be apprehended from these institutions, there is reason to believe that their operations have been and will continue to be salutary and useful.

3. Because the bill in some instances essentially affects the rights of individuals. It is well known that the stock of banking companies, in general, sells at a considerable advance. On those therefore who have paid a premium on the original price of the stock of either of those companies, and there must be many of this description, the bill operates in the nature of a penalty, although they do not hereafter contravene any of its provisions; for it cannot be denied that if suppressed in the manner proposed, the stockholders will not be able to divide more, if so much, as the par value of their shares, the excess which has been given by fair purchasers who have violated no law will of course be lost, and in this way a fine will be inflicted indirectly, at least, on many of the members for doing what at the time was no offense.

4. Because the bill prohibits associations for the purpose of doing any business which incorporated banks may do by virtue of their respective acts of incorporation. Now, inasmuch as the Manhattan Bank, which is incorporated, may transact any kind of business, it may be questioned whether any association or partnership can hereafter be formed within this State for carrying on commerce, or any other business whatever, however useful to the public, and although no individual may have enterprise or capital sufficient to undertake it. But if the Manhattan company be not regarded as an incorporated bank, then it must be an unincorporated association within the purview of the bill, and cannot issue notes or loan money after the first Tuesday in May, 1805, which it is conceived could not have been the intention of the Legislature.

ALBANY, *March 26, 1805.* Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act to incorporate the stockholders of the Merchants' Bank in the city of New York,*" was before the Council. Justice Spencer reported the following objections, viz.:

1. Because there are three banks already established by law in the said city of New York, possessing capital stock to the amount of about \$5,000,000, with authority to issue notes and create debts to the amount of at least \$15,000,000. And when it is considered that an alarming decrease of specie has taken place in the United States generally, and still continues to take place, it is jeopardizing the interests of the community to erect other banks, and more especially in the city of New York, thereby to increase the influx of bills of credit, already too great, and to further banish from circulation the precious metals.

2. Because the bill contains no evidence, nor does there exist any on the journals of either house, or by petition before the Legislature, that the creation of a fourth bank in the city of New York is required by the commercial interests of that city, or the agricultural interests of the State; the obvious conclusion, therefore, is that the said bill is passed to promote the cupidity of a few individuals at the expense and manifest prejudice of those banks already established by law; an incorporation under these circumstances would promote a dangerous species of speculation, the bane of all well-regulated governments.

3. Because it appears by the journals of the honorable the Senate of the thirteenth of March instant, that, on passing in that body the first enacting clause of the said bill, fourteen Senators voted in the affirmative, and twelve in the negative, and that Ebenezer Purdy, Esq., was one of those who voted in the affirmative; and it further appears, by the journals of the honorable the Assembly of the eighteenth of March instant, from the affidavits of Stephen Thorn, one of the Senators, and Obadiah German, a Member of the Assembly, that the said Ebenezer Purdy had attempted to corrupt their votes, respectively, by holding out to them large rewards and benefits to induce them to vote in favor of the said bill; and it also appears, by the said affidavit of the

said Obadiah German, that the said Ebenezer Purdy declared to him that he had told the directors or agents of the said bank that for his assistance in obtaining a charter for said bank, they must admit him to be largely interested, and that upon that point there was, between the said Purdy and the said agents or directors, a mutual understanding, and that they, the said Purdy and German might obtain more for their assistance than any other persons. These facts, for ought that appears on the said journals of either house, remain uncontradicted and unexplained. A case so novel and extraordinary demands the exercise of all the constitutional powers vested in the Council. If the said Ebenezer Purdy was capable of offering the said bribes, or if he had an immediate and certain interest in the passage of the said bill, his vote cannot be considered legitimate, and he ought not to have voted thereon. If the vote of the said Ebenezer Purdy be taken from the affirmative side, there would have been but thirteen in favor of the said first enacting clause, and had not the said Ebenezer Purdy been improperly influenced by the aforesaid understanding between him and the said agents or directors, he probably would have voted against the said first enacting clause, in which case it does not appear that the same would have passed. This probability derives great force from another fact appearing in the said affidavit of the said Obadiah German, namely, that the said Purdy told the said German that he had a conference some time last fall with the directors of the Merchants' Bank, *and that he had become convinced it was proper to incorporate the said bank*, from which it is to be inferred that before such improper means were made use of by the said directors, with the said Ebenezer Purdy, he was averse to their incorporation; it is further strengthened and supported by the fact that the said Ebenezer Purdy was, for his assistance in obtaining a charter for the said bank, to be admitted to a large interest therein; for had the said Ebenezer Purdy, before such conference, been well disposed to an incorporation of the said bank, there existed no inducement on the part of any of the said directors to impart to him, to their own prejudice, an interest in the said institution; his duty as a legislator in that case, ought to have prompted him in all proper ways to have advocated an incorporation of the said bank. From these considerations it is

fairly to be intended that the vote of the said Ebenezer Purdy was, on the passage of the said first enacting clause, influenced by inducements the most improper, and that it was diverse to what it would have been unless such unwarrantable means had been made use of, and produced their intended effect. To sanction a bill thus marked in its progress through one branch of the Legislature with bribery and corruption, would be subversive of all pure legislation, and become a reproach to a government hitherto renowned for the wisdom of its councils and the integrity of its legislatures; and it would, moreover, become a precedent dangerous in the highest degree in all future times.

4. Because, from the facts stated in the last objections, there are at least good grounds to apprehend, should the said bill become a law, that the public opinion will attribute its enactment to means the most foul and unwarrantable; and thus a want of confidence will be produced on the part of the people towards those to whom legislative powers may be entrusted, and in the end the public functionaries will lose that respect and confidence so essential to the maintenance of the laws and the upholding of government itself.

5. Because the facts stated in the affidavits of the said Stephen Thorn and Obadiah German were not known to the honorable the Senate, when the said bill passed that branch of the Legislature; the Senate therefore had not, as they ought to have had, an opportunity of acting on the said bill since the disclosure of a scene of bribery and corruption hitherto unparalleled. It cannot be believed, had it been known to that branch of the Legislature that the directors or agents of the said bank had authorized individuals to corrupt their members, that they would have countenanced and much less that they would have passed the said bill. In a case thus circumstanced the said bill ought not to receive the sanction of the Council.

ALBANY, *March* 28, 1806. Present—Governor Lewis; Kent, Chief Justice; Thompson and Spencer, Justices.

A bill entitled "*An act for the relief of Henry Delord,*" was

before the Council. The Chief Justice reported the following objections, viz.:

Because the bill provides that if any suit shall be already commenced against the said Henry Delord, to recover any fine, forfeiture or penalty incurred for any infraction of the fourteenth section of the act entitled "An act for the repacking and inspection of beef and pork," the same shall be discontinued on payment or tender of the costs of such suit. The bill, therefore, in the case of a suit already brought (which we may presume to be the fact), interferes with and takes away a private right acquired under the former statute, and which had become vested in the party commencing the suit. The act above referred to gives one moiety of every such forfeiture or penalty to any person who will sue for the same; and by the common law of the land the party commencing such suit acquires a right of property in his proportion of the penalty; the popular action becomes his private action, that thereby attaches such an interest in himself to his moiety of the forfeiture, that a pardon of the offense will not affect it.

ALBANY, *March 8, 1811.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act to incorporate the stockholders of the Union Bank in the city of New York,*" was before the Council. Justice Spencer reported the following objections, viz.:

Because it appears by the petition, signed by Amasa Jackson and others, styling themselves the president and directors of the Jersey Bank, accompanying the said bill, that the said bank has effected discounts and loans to a large amount, and it is not only therefore to be intended, but it is also a notorious and public fact, that the bank bills of the Jersey Bank are in extensive circulation within this State. The ninth section of the bill enacts that unless the president and directors of the Jersey Bank shall, within three months after the passing of this act, surrender and dissolve the charter they hold under the act of the Legislature of New Jersey, or unless the same shall be otherwise dissolved, that then the act intended to be passed into a law, and the provisions therein con-

tained, shall be null and void. The condition then on which the new corporation is to have continuance beyond the space of three months, being the dissolution of the charter held under the Legislature of New Jersey, should that event take place, then it is extremely doubtful whether there would exist any legal remedy, in favor of such persons as are the holders of the bills and notes of the Jersey Bank, to enforce the payment thereof after the dissolution of the charter under New Jersey; it is certain no suit could be maintained against the persons who composed that corporation in their natural capacity, and it appears equally clear that no suit can be maintained against a dissolved corporation in terminating its legal existence. The bill contains no provision creating a liability on the part of the new corporation for the debts due from and the notes and bills issued by the president and directors of the Jersey Bank; the only liability created against the new corporation is for bills obligatory, and of credit under the seal of the new corporation, and for bills or notes which may in future be issued by it. If, therefore, there be any amenability on the part of the new corporation for the debts of the old one, it must arise not from any provisions in the bill, but from the common law; and although it be true that on an alteration in the name of a corporation, whether by the addition of another component part or otherwise, they retain the property which belonged to them before the alteration, and are equally liable to all claims and debts to which they were before subject, yet this is not that case. The bill goes to create a new corporation, which is to consist of the stockholders of the former corporation; the new corporation is not an alteration of the old, but on the contrary, should this bill pass into a law, there would be coexisting two bodies corporate, the one created by the bill and the other under the law of New Jersey, which latter the bill recognizes as in *esse*, and requires to be dissolved. The principle on which the alteration in name of a charter has been held not to work a prejudice is, that such alteration produces only a mutation in the corporate style, and the law supposes the same corporation to have been continually existing, though a modification of it has taken place.

But in the present case the former charter was granted under another sovereignty, and although the same natural persons may

be incorporated under a different sovereignty, such new incorporation cannot be considered as an alteration in the former charter, for it becomes at once a new legal entity. In this view, not only the rights of persons holding the notes and bills of the Jersey Bank are impaired by the bill, and the requirement it makes that the former corporation be dissolved; but the interests of the stockholders in the Jersey Bank are materially affected, inasmuch as after dissolution of the former corporation, no suits could be maintained for the debts due to the old corporation; not by the old corporation, because it would not exist; and not by the new because the right to sue for the debts of the old, are not given by the bill. How the charter under New Jersey is to be dissolved is not matter of inquiry for the Council; they intend that such dissolution will take place, because the persons intended to be incorporated are required to effect it. A bill thus improvisory, and which places upon at least a very doubtful footing the rights of *bona fide* holders of the notes and bills of the Jersey Bank, to an unknown amount, and which may, in its consequences, be vastly injurious, ought not to become a law of this State.

ALBANY, June 2, 1812. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Thompson, Spencer, Van Ness and Yates, Justices.

A bill entitled "*An act to incorporate the stockholders of the Bank of America*," was before the Council. Justice Spencer reported the following objections, viz.:

Because the existing banking capital in the city of New York, within which it is to be presumed the operations of the intended bank are to be primarily and principally conducted, already exceeds \$8,000,000, and in the most prosperous times and whilst commercial enterprise was unchecked by the depredations of foreign nations, or the legal restraints of our own government, this capital was found adequate to commercial exigencies. To extend the banking capital at the present period, when our foreign commerce has become stagnant, and when the American nation is in all human probability on the eve of a war in defense of our

commercial rights, would be unnecessary and unwise, and probably productive of consequences highly injurious as well to individuals as to the public.

Because the bill goes to establish a bank with a capital of \$6,000,000, whilst the capitals of none of the existing banks, exceed \$2,000,000; the bill therefore concentrates in a single institution a power alarming to the minor banks, a power which may be wielded in such manner as to destroy the independence of those establishments, and may in the end prove highly detrimental not only to the prosperity of the community, but may subvert those institutions, in which many persons have embarked under the confidence of governmental protection, and upon the legislative faith that no act would be unnecessarily passed which might impair or destroy their security.

Because the bill does not restrain the operations of the intended bank to the city of New York, but enables the directors thereof to extend their operations and to establish their branches in other parts of the State; a power thus unlimited may be exercised in such a manner as not only to prejudice the interests, but to control the operations, destroy the independence and impair the security of every bank north of the city of New York, whose capitals are comparatively small, and thus property as well of individuals as of the State, may be depreciated, if not endangered. A bill thus improvisory and alarming, giving undefined and unnecessary powers, and leaving the exertion of those powers to a few individuals, should it become a law, would materially weaken the confidence of community in the justice, wisdom and foresight of the Legislature.

ALBANY, June 16, 1812. Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness, Justice.

A bill entitled "*An act providing for the election of representatives for the State in the Congress of the United States*," was before the Council. Chief Justice Kent reported the following objections, viz.:

Because it provides that twenty-seven representatives for this State in the House of Representatives of the Congress of the United

States, for the term of two years, commencing on the fourth day of March next, shall be elected on the third Tuesday of December next, whereas seventeen of the said twenty-seven representatives have already been elected by the people of this State, at the general election held on the last Tuesday in April last. That such an election was held is a fact of public notoriety, of which none can pretend ignorance, and that such an election was lawfully held, appears by the act of the Legislature of this State of the 24th March, 1801, and of the 8th April, 1808, prescribing and regulating such elections. Those statutes were in force, unless repealed by the act of Congress of the twenty-first of December last. But the act of Congress did not repeal those statutes, neither by express words nor by necessary implication. The act of Congress did nothing more and intended nothing more than to declare the number of representatives which each State was entitled to under the last enumeration, and the apportionment made in pursuance thereof. If it had been intended to have altered the existing regulations in the several States, as to the time, places and manner of holding elections for representatives, the language would undoubtedly have been explicit. If the State laws are repealed, it can only be on the ground that they are repugnant to the act of Congress; but unless such repugnancy be absolute and necessary, it cannot work a repeal of the State laws; for it is a wise principle in the construction of statutes not to favor a repeal by mere implication, because it tends to lessen the dignity and authority of laws. This principle becomes of peculiar value and importance when a question arises whether the laws of one government, possessing jurisdiction in the case, are repealed by those of another possessing a like jurisdiction and to be exercised for its own preservation. The fact of a new enumeration and apportionment of representatives will not of itself, and without reference to any incompatibility resulting from it, produce a repeal of the former State regulations; for it may be that upon such new enumeration and apportionment, the number of representatives from a State will remain the same, without increase or diminution. Nor does the increased inequality in the districts within the State (if any there be) arising under the new enumeration, affect the question; for inequalities do and will exist upon every creation

of districts, and the inequality, whatever it may be, goes only to the equity and not to the constitutionality of the provision. Whenever the State regulations in this respect are unequal and unjust, it will be the duty, as it is at all times within the power of Congress to correct them. It is the absolute impracticability of executing the existing laws, under the new apportionment, that will destroy them; and such a case would have occurred, if, instead of twenty-seven representatives, this State had been entitled under the last enumeration only to twelve representatives. But the increase of the representatives beyond seventeen does not prevent the election of seventeen under the existing laws, nor does such an election disable the Legislature from providing afterwards for the election of the residue. It rests in the discretion of the State Legislatures to prescribe the time when and the mode in which the representatives shall be chosen, and they may in the exercise of that discretion cause part of the representatives to be elected at one time and part at another. This power granted to the States, is of a permanent nature. It is a substantive and general provision, and it is not to be construed as a temporary grant, expiring with the period of each apportionment. In this State, the districts have been repeatedly altered during the period of the same enumeration. The application of the power becomes requisite on every new apportionment, in order to give such apportionment full effect, but the former exercise of the power will remain good, so far as it is not destroyed by an absolute repugnancy between the one provision and the other. Suppose there had been, on the last enumeration, no variation in the population or representation of this State, must the former laws be reenacted in the same words to give them force? If there had been no election this last spring, it cannot be doubted that the Legislature might have directed seventeen representatives to be elected in December next, either in districts to be established for the purpose or by a general ticket, and the remaining ten representatives to have been elected at some other time under the like provisions. Whatever doubt there might be as to the wisdom, there could be none as to the competency of such a regulation. Whatever our State regulations on the subject may be, they remain valid and operative until altered either by the power that enacted them or by an act of Congress made ex-

pressly and for the purpose of altering them. Though the existing regulations of this State did not provide for the election of more than seventeen representatives, they were competent and binding to that extent, for it is another and generally sound maxim in the construction of the statutes, that one statute is no further repealed by a subsequent statute by implication than the case renders indispensable.

The former law is to operate to all the extent in which it can be consistent by any possible construction with the provisions of the subsequent law.

ALBANY, *June 19, 1812.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness, Justice.

A bill entitled "*An act concerning the Judges of the Supreme Court,*" was before the Council. Chancellor Lansing reported the following objections, viz.:

Because the Constitution having recognized the Supreme Court, in its organization and powers, as existing under the colonial government, derived from those of the English common law courts of King's Bench, Common Pleas and Exchequer, in none of which courts, Colonial or English, have the number of judges at one time exceeded *five*, has thus imperatively fixed that number as the common law maximum incapable of being exceeded, but by an express act of the Legislature, in conformity to the declaration of the Constitution, that such parts of the common law of England as composed part of the law of the Colony should be and continue the law of the land, subject to such alterations and provisions as the Legislature of this State should from time to time make concerning the same.

Because the bill authorizes the honorable Senate and Assembly, by concurrent resolution, to direct the extension of the limitation of *five* judges to an indefinite number; thus evading the constitutional revision of this Council, and precluding it from expressing its opinion whether existing circumstances render it consistent with the public good to enlarge the number in a case in which this Council must constitutionally be presumed eminently qualified to

from a correct judgment on the subject, as its constituent members are the executive and the judicial officers presiding in the superior courts of original jurisdiction of the State.

Because the bill, from its nature and object, is indefinitely prospective, and the powers granted by it incapable of being exhausted by successive concurrent resolutions; thus not only destroying the independence of the Council by exposing it to be borne down by the introduction of new judges, whenever its measures do not comport with the opinions of a major part of the members composing the honorable Senate and Assembly, but placing the Council in absolute subserviency to them, instead of forming the check the Constitution intended upon this proceeding.

Because if the bill should become a law, and concurrent resolutions should be passed during the present sessions for the appointment of one or more judges, this number might be doubled in the next session, and subsequent members of the Legislature might increase them by the same means a hundredfold, and thus the salutary efficacy of the judiciary might be virtually impaired, and the people of this State be burdened with a useless and intolerable expense, unsanctioned in the forms prescribed by the Constitution, or by the constituted authorities, to whom collectively, each acting in the sphere assigned to it, the Constitution has committed these important and incommunicable powers.

Because the business of the Supreme Court has of late been so much diminished, that there is *now* less necessity for a greater number of judges than there has been for several years past.

Because the peace and prosperity of the State are inseparably connected with an unshaken and implicit confidence of its citizens, that the judiciary exercises its powers on the most solid and undoubted authority, the constitutionality and legitimacy of which will not admit of hesitation or doubt; and this bill if passed into a law may afford strong grounds for such doubts.

The Council amended the above objections so as to read as in the body of the work, pages 370-1.

ALBANY, April 9, 1813. Present—Governor Tompkins; Kent, Chief Justice; Lansing, Chancellor; Thompson, Spencer, Yates and Van Ness, Justices.

A bill entitled "*An act for the encouragement of American manufactures,*" was before the Council. Chief Justice Kent reported the following objections, viz.:

1. Because it establishes a corporation in the city of New York entitled "The President and Directors of the Commission Company," with a capital of \$600,000, and with power to contract debts to double that amount, and the business of the company is declared to consist "in making advances of money on American manufactures and selling the same on commission," thus introducing a new class of corporations into our statute book. It is setting a precedent which, considering the unusual increase of incorporated companies within the last few years, there is reason to apprehend will be found pregnant with incalculable mischief to the equal rights as to the personal interests of the community. It is bringing the weight of a large moneyed capital and the addition of a great fictitious credit into competition with private individuals in the ordinary business of domestic trade. It is easy to foresee the consequences of the competition. A numerous class of our fellow-citizens, who, with moderate means, pursue the business to which this bill directly or indirectly applies, and are thereby enabled to maintain their families, to diffuse enterprise, to equalize profits, and to give life and vigor to our domestic commerce, would be obliged to yield the competition and retire from the market. Such a company would be able to monopolize the business to which they are to apply, by the aid of this combined capital, this fictitious credit and this shelter of a charter; and because all other commission merchants who have not these adventitious aids are obliged to act solely upon their private credit and their personal responsibility.

2. Because, though the bill imports to be passed for the encouragement of domestic manufactures, its provisions do not appear to be calculated to promote that salutary object, inasmuch as the tendency of the bill is to force the produce of the manufacturing labor of the country into the warehouses of the company, from whence it will issue to the purchaser loaded with what the bill

vaguely terms "the usual mercantile commissions with the usual charges." The profits of the company will be in proportion to the weight of the tax, which will ultimately fall upon the consumer.

3. Because the disposition for speculation (which is already too prevalent) and the success of this establishment will inevitably lead to the increase of these trading corporations, as the government cannot well deny to one set of merchants the favors which they grant to another set with no better pretensions. If a body of commission merchants are incorporated in New York for the purpose of storing or selling flour, and the innumerable other articles of domestic manufactures, it will be found hereafter almost impossible to set bounds to so alluring an example, and the internal commerce of the State may become engrossed by incorporated companies. This would be against the public good, because every institution which tends to lessen competition in mercantile business is sure in the end to enhance the price of commodities to the consumer.

ALBANY, *January 25, 1814.* Present—Governor Tompkins; Lansing, Chancellor; Kent, Chief Justice; Van Ness, Spencer and Yates, Justices.

A bill entitled "*An act to alter the name of the corporation of Trinity Church in New York, and for other purposes,*" was before the Council. Chancellor Lansing reported the following objections, viz.:

1. Because of the members of the several incorporated societies in communion of the Protestant Episcopal Church in this State, formed in the city of New York after the passage of the act entitled "*An act for making such alterations in the charter of the corporation of Trinity Church as to render it more conformable to the Constitution of this State,*" have a right to vote at the annual elections for the churchwardens and vestrymen of Trinity Church, though not having been members of the corporation of Trinity Church within one year preceding such election, or any of the chapels belonging to the same, and forming part of the same religious corporation, and holding, occupying, or enjoying a pew in

the said Trinity Church, or any of the chapels thereof, or not having partaken of the holy communion therein within such year, in consequence of the rights and privileges vested in them by the laws of this State and the incorporation of Trinity Church, the limitation of the right of election provided by the bill may divest or impair such right. And if any doubts exist respecting such right of suffrage, it is consistent with the salutary principles of the Constitution of this State to refer them to judicial cognizance as the appropriate and legitimate resort of adverse claimants in controverted cases of that description. This principle has been heretofore recognized by the Council in an analogous case, and which received the sanction of the honorable the Assembly by an almost unanimous vote, as will appear by a reference to their journals of the 7th of February, 1810.

2. Because the charter, being a private grant, and it not appearing by recitals or otherwise what are the existing doubts respecting the rights and privileges thereby given, the Council are deprived of the means of judging whether any vested corporate rights are not violated by the restrictions and provisions contained in this bill.

3. Because the saving clause contained in the proviso to the last section of the bill, "of the right of any person or persons, or of any body corporate to the estate, real or personal, now held, occupied or enjoyed by the corporation of Trinity Church," is nugatory, inasmuch as all such rights, so far as they respect the corporators, depend principally upon, and are inseparably connected with the right and privilege of being a member of the corporation and voting for churchwardens and vestrymen who have the management and disposition of the temporalities belonging to the corporation.

ALBANY, October 21, 1814. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer, Justice.

A bill entitled "*An act to encourage privateering associations*," was before the Council. Chancellor Kent reported the following objections, viz.:

1. Because privateering is merely tolerated and is not approved of, either by the maxims of public law or the opinion of enlightened jurists. The practice is liable to great disorder, and as its professed object is the plunder of private property for private gain, its tendency is to impair the public morals, to weaken the sense of right and wrong, and to nourish a spirit of lawless ferocity. By the treaty between the United States and Prussia, which was signed on the part of the former by John Adams, Benjamin Franklin and Thomas Jefferson, and ratified by Congress in 1785, privateering was totally prohibited to either party when at war with the other. So, the Constituent Assembly of France, in 1792, and before the public passions had become intemperate, passed a decree for the absolute suppression of privateering, as unworthy of the nation. These opinions may have been upon one extreme, though moderation in war is always the mark of wisdom; but to pass from them to the other extreme, and to give a direct legislative encouragement to the practice by conferring on those concerned in it, the extraordinary benefit and security of a charter of incorporation (a favor hitherto reserved for municipal, commercial, literary, charitable and religious purposes), seems not to be conducive to the public good. The cupidity of individuals is already sufficiently inflamed, and ever since our first existence as a nation, the business of privateering hath, without such patronage, been found to be exceedingly active and alluring.

2. Because it is an unnecessary interference with the power of Congress "to grant letters of marque and reprisal, and make rules concerning captures on land and water." The government of the United States is thus made the judge, to what extent, with what aids and under what regulations the practice ought to be promoted. The whole subject matter of the bill belongs properly to that government and not to the individual states, and it is to be presumed that Congress have already made all the rules on the subject of privateering which they deem consistent with the public policy or the national character. The interfering regulations of the States, on a matter of such general concerns, are the more improper, since they may unintentionally, or under the influence of local interests and local passions, pervert the policy or commit the character of the nation; and this interference may also destroy

uniformity and consistence of rule; for if one State may encourage the practice by rewards, another State may equally discourage it by disabilities.

Because the effect of an incorporation is to weaken or destroy the individual responsibility of those concerned in privateering, and it has hitherto been found expedient, both in this country and in Europe, to require large personal security to guard the practice from abuse. The protection and the cover of a charter must greatly lessen the sense of legal obligation to good behavior.

ALBANY, *October 22, 1814.* Present—Governor Tompkins; Thompson, Chief Justice; Kent, Chancellor; Spencer, Justice.

A bill entitled "*An act concerning vessels in the port of New York,*" was before the Council. Chancellor Kent reported the following objections, viz.:

Because it gives to the corporation of New York a power to remove at their discretion, at any time during the present war, and without any cause to be assigned, all or any private vessels in the harbor of New York to any part of this State or of the State of New Jersey; and this removal to be at the risk and expense of the owner, for which expense the owner is made personally liable to suit. This is vesting in that corporation a most arbitrary and unprecedented control over the disposition of private property, without making the power to depend upon the existence of some absolute necessity. No doubt when such necessity exists, private property must be subservient to the public safety, but the public are then bound in all good conscience to indemnify instead of charging the owner with the expense. If a house is to be pulled down to arrest the progress of a fire, the owner ought not to pay for pulling it down. The bill is the more oppressive in this case, since, under the severe affliction that now attends all commercial property, the owner may not find it convenient to bear the expense of the removal, or he may not deem the property of sufficient value. The bill is also repugnant to the spirit of an express provision in the Constitution of the United States, which declares that

private property shall not be taken for public use without just compensation.

The Council amended the above objections so as to read as in the body of the work; page 377.

ALBANY, *October 24, 1814.* Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer and Yates, Justices.

A bill entitled "*An act to authorize the raising of troops for the defense of this State,*" was before the Council. The Chancellor reported the following objections, viz.:

1. Because the Constitution of the United States has granted to Congress the power to raise and support armies, and with it the exclusive power to lay and collect imposts, and the concurrent power to lay and collect taxes, duties and excises in order to provide for the common defense and general welfare. After such a transfer of power and of the best resources of the State, the raising immediately so large an army as twelve thousand men, and at the sole expense of the people of this State, so far as respects the organization, bounty and equipment of the corps, and which expense alone, according to the terms of the bill, may amount to nearly or quite \$2,500,000, is an undue, disproportionate and most burdensome contribution for the common defense. The individual States, as States, have nothing to do with the war except for the mere purpose of self-protection. The entire power of creating, conducting and concluding war, and with it the correspondent duties and responsibilities, are confided exclusively to the government of the United States. Nor do the provisions of the bill correspond with its title; for the troops so raised are to be placed for two years under the command and at the disposal of the government of the United States, without any restriction as to place or object, and who may accordingly employ them wherever they please, and upon such projects of conquest as may suit the policy of the government, while the defense of this State from actual invasion may, in the meantime, be left to be borne by its remaining citizens.

2. Because the mode of raising the army by compulsory assessments and drafts, will be unjust, unequal and grievously oppressive in its operation. The poorest counties in the State must raise as many soldiers, in proportion to their population, as the most wealthy. The bill is not intended for the case of an occasional draft or detachment of a portion of the militia for some sudden and pressing emergency, according to the hitherto received policy of our mild militia systems, and which were never intended to change essentially the free and independent character of citizens. The scheme of this bill is to transfer, forcibly and by military law, citizens into soldiers for long national service, and thereby breaking up, probably forever, all their plans of business, and the manners and morals and habits of domestic life. And this new plan of raising an army appears to be as unnecessary as it is alarming. It is hardly to be supposed that the government of the United States, if it really deserves and retains the affection and confidence of the nation, cannot raise by voluntary enlistments and on reasonable terms a force adequate to all the just purposes of national defense. Nothing, however, short of extreme necessity can justify any government, and especially the government of a free people, in raising armies by means so vexatious, revolting and arbitrary as those proposed by the present bill, and which cannot but remind us of its analogy in too many of its details to the memorable code of the French conscription, and which, as it is well known to the world, produced the most intolerable miseries in France.

3. Because the bill does not allow of any exemption from detachment for personal service as common soldiers in this army to persons who may have heretofore borne military rank, or who are still officers in the militia, nor to aliens of any denomination or description, nor to the professors and pupils in our seats of learning, nor to any of the existing civil officers of the government of this State, however exalted in station or venerable in character; while all the civil officers of the government of the United States are exempted by the laws of Congress, and by the provisions of this bill. The painful consequence of such indiscriminate requisition may be felt but cannot be described. It follows that the ordinary duties of government, and even the administration of justice, may be suspended; and an odious and degrading distinc-

tion is created between the officers of the two governments, though the same official characters in each are equally important to the public welfare, and ought to be equally protected in the exercise of their functions.

4. Because the bill provides that the Governor shall appoint by brevet all the officers of this army, and who are authorized to act and to hold their rank until the Council of Appointment shall have made the appointments. This is in direct violation of the twenty-third article of the Constitution of this State, which declares "that all officers other than those who by the Constitution are directed to be otherwise appointed, shall be appointed by the Council." There is the less necessity for this breach of the Constitution, and for the creation of such immense patronage and unwarrantable power in the Governor, since there is an existing Council ready and competent to perform their duty.

5. Because by the bill, if a person has property situate in two or more counties, the property in the county in which he does not reside is made liable, under the name of non-resident property, to assessment for its proportion of the bounties in that county, though such owner is also charged with his proportion of the assessment of the class in which he belongs and resides, and agreeable to his estate, circumstances and ability. By this means he becomes doubly taxed, contrary to the most obvious principles of equality and justice, and the new lands for which he becomes thus amerced to procure a soldier, are at the same time wholly unproductive of revenue, and as little liable to be affected by any incursions of the enemy as they are by the wild beasts which now inhabit them.

ALBANY, *October* 24, 1814. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer and Yates, Justices.

A bill entitled "*An act to authorize the raising of a corps of Sea Fencibles*," was before the Council. The Chancellor reported the following objections, viz.:

Because the Governor is, by the bill, authorized to appoint by brevet all the officers of the said corps, who are to hold their re-

spective commissions until the Council of Appointment shall have appointed the said officers, thereby rendering that organ of executive power unnecessary, until the Governor, in his pleasure, shall think it expedient to use it, and thereby forestalling the judgment of the Council when it is to be called into session. The Constitution knows nothing of appointment by *brevet*, and if such an idea has heretofore crept into any of our voluminous and complex militia law, it is believed it never extended further than to the case of an existing commissioned officer, to meet the occurrence of some vacancy in a superior grade, and if it did, the precedent is not binding. The Council of Appointment is the only constitutional power to appoint, and if the Legislature can, by law, vest in the Governor the power of appointing new military officers by brevet, with authority and pay as officers, they may, with equal propriety, authorize him to appoint brevet judges and sheriffs, and make brevet removals, and thus render the Council wholly useless, and one of the essential organs of our Constitution may, at last, fall a sacrifice to a *French* term. The word *brevet* is no more applicable to any legitimate construction of our Constitution, than if it was taken from the *Chinese language*. In the French vocabulary, from which it is borrowed, it means only an informal, honorary or titular appointment, and in the French customs, according to the information of the French Academy, there are brevet dukes, brevet abbés, brevet apprentices and brevet courtézans, as well as brevet generals and colonels. The people of this State were once called upon in Convention to declare their sense of the powers of the Council of Appointment, and although the Governors had before asserted and exercised the exclusive right of nomination, the Convention were so scrupulous on the subject, that they rejected this construction, however wise and salutary it might have been considered. Whatever, then, we may think of the original institution of the Council of Appointment, or of the limited prerogatives of the Governor, it is a duty in which we have no choice, to support the one in all its rights, and to prevent the other from all usurpation; and if we permit such an important pillar of the Constitution as the Council of Appointment to be removed, the whole fabric may soon be brought to the ground, and bury us beneath its ruins.

The Chancellor also stated that he applied the aforesaid objections, in all respects, to the bill entitled "An act to authorize the raising of two regiments of men of color."

ALBANY, April 11, 1815. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer and Platt, Justices.

A bill entitled "*An act to amend an act entitled 'An act for regulating elections,' passed March 29, 1813,*" was before the Council. The Chancellor reported the following objections, viz :

1. Because the bill requires every black or mulatto person, within the city of New York, to make and exhibit, at his own expense, before the mayor, recorder or register, satisfactory proof of his freedom, and to cause a certificate thereof from the officer, to be recorded and produced to the inspectors, to entitle him to vote at any election; and not only every other black or mulatto person, who may be free and qualified to vote, is immediately subjected to this provision, but it includes, after the first of May next, all those who may have heretofore given the due proof of their freedom, and obtained the requisite certificate thereof, in the mode prescribed by the existing laws. By this means, a qualification already acquired under a provision made specially for such persons, is to be disregarded and rendered null, and a new qualification exacted.

2. Because the bill requires not only proof of their freedom to be made and certified in manner aforesaid, but also of their qualifications to vote in respect to property; thereby subjecting this description of persons to a new mode of ascertaining their real and personal estates, and presenting a different test of property to one class from what is presented to other classes of citizens, and thus rendering the provision unequal and partial in its operation.

3. Because the bill is not only unequal in respect to free and qualified voters of that description, as distinguished from whites, but it is still further unequal, by subjecting those who reside in the city of New York to proofs and burdens not required of those who reside elsewhere.

4. Because the bill requires, in addition to the proof and certificate aforesaid, that every such negro or mulatto, at least five days before the commencement of any election, including the election to take place on the twenty-fifth instant, shall deliver to the register his affidavit, stating the particulars of his qualifications as to property; and if he omits to do this, and is challenged at the election, he shall not vote, unless he proves to the satisfaction of the inspectors, by one or more witnesses, that he is in all respects qualified to vote. Thus, further, a new and peculiar proof is to be exacted of this class of people, notwithstanding they may have made satisfactory proof to the mayor, recorder or register, in the form prescribed by law, of their freedom and qualifications. Checks and regulations so multiplied, must tend greatly to impair the value, by increasing the difficulty, of using the right of suffrage; and no doubt can be entertained that such provisions as to property would be deemed and felt, by any other class of citizens selected from the rest, as the object of them, to be most injurious and most unjust. This part of the bill will fall with particular severity upon such negroes and mulattoes as by the law of the land are entitled to vote at the next election, since a few days only can intervene between the promulgation of the law in New York, and the time fixed for filing their affidavits. Such interference with the exercise of an existing and precious right, and especially on the eve of a pending election, must, of necessity, oblige the persons affected by it, either to abandon the right altogether, or to submit to excessive diligence, or great and painful inconvenience. It is creating a precedent, which is the more dangerous, as it may hereafter be extended, on grounds equally just, to other descriptions of citizens, and prove fatal to the liberties of our country.

ALBANY, April 13, 1815. Present—Governor Tompkins; Kent, Chancellor; Thompson, Chief Justice; Spencer and Platt, Justices.

A bill entitled "*An act apportioning the representation of this State according to the rule prescribed by the Constitution,*" was before

the Council. The Chancellor reported the following objections, viz.:

Because it leaves the senatorial districts to continue in their former state of inequality, and disproportion to each other; and that inequality, owing to the increase of population and consequent increase of representation, in the western district, has grown to be a great evil, as it deprives the inhabitants of that district of their due share of representation in the Council of Appointment, and renders it extremely difficult for the inhabitants thereof to obtain that knowledge of the different parts of the district which is requisite to enable them to unite in the choice of upright and intelligent candidates.

ALBANY, November 5, 1816. Present—Governor Thompson; Kent, Chancellor; Thompson, Chief Justice; Spencer, Van Ness, Yates and Platt, Justices.

A bill entitled "*An act to suppress dueling*," was before the Council, to which the Chancellor reported the following objections, viz., as inconsistent with the spirit of the Constitution; because,

By the second section of the bill, every person to be elected a member of the Senate or Assembly, or to be elected or appointed to any office, civil or military, except town officers, and every person to be admitted a counselor, attorney or solicitor of any court, shall, in addition to the oaths now prescribed by law, take an oath or affirmation that he has not been engaged or concerned in a duel since the first day of July now last past, nor will be so concerned during the continuance of the act and while an inhabitant of this State.

This provision establishes a test or qualification for office, unknown to the Constitution, dangerous as a precedent and inconsistent with the principles of liberty.

It cannot be necessary for the Council to declare that they solemnly bear testimony against the practice of dueling as being cruel and wicked, and equally condemned by the law of the land and by the just and benevolent precepts of Christianity. To take life in this way is murder by the common law, whether he that gave or he that accepted the challenge fall, and if conviction and

punishment have not duly followed the crime, it has not been the fault of the law, nor of the judges by whom it was to be pronounced. But to whatever cause we may impute the feeble execution (as the bill evidently supposes) of the existing laws on this subject, there is no occasion that will warrant the introduction of unsound principles of legislation.

Test oaths, as a qualification for public trust, other than the oath of allegiance and the usual oath of office, are inconsistent with the letter and spirit of our American Constitutions. In some instances there is an express declaration against them. The requisition in the present case is not founded on any religious test, but it is equally tyrannical, for it requires every man, before he can receive or enjoy any public trust, to acquit himself, upon oath, of a particular crime, without being legally accused of it, and when he stands innocent under the intendment of law.

The bill in this respect reverses the maxim of the common law, and presumes every man guilty. With equal right, if not with equal reason, he might be compelled to clear himself of every other crime without being put to answer by indictment or presentment, and without the privilege of an appeal to his peers. It is dangerous to admit a principle so destructive of civil liberty into the code of our statute law. A most terrible inquisition might thus be erected over the consciences of men. The penalty of refusal to answer is not indeed in this case the rack or the stake, but it is extremely severe, being no less than a disqualification to hold any place of honor, profit or trust, or even to exercise one of the learned professions. Dueling does not appear to be so grievous a public evil, nor does it usually denote such depravity of moral principle as other examples of murder, and as arson, rape, forgery and various kinds of larceny, swindling and fraud. It often proceeds from a lofty and scrupulous but misguided sense of reputation. Why may not these other offenses, and all other immoral acts, be brought to the same test, and checked by the same means? Times may hereafter arise when an undue zeal for reform, or a fierce and intolerant fanaticism, might easily be led to proceed from crime to crime, and from one misdemeanor to another, with the same potent remedy, until every man is obliged to renounce his civil privileges or swear to the purity of his whole life.

The bill extends this oath to attorneys at law before they can be permitted to practice, but it is not applied to candidates for the other learned professions, though the same reasons would seem to apply, and though the admission of physicians and surgeons is equally the subject of legislative regulation. The bill therefore is not impartial in the imposition which it creates. If the principle be just, it ought to have a general and equal application. It ought to be extended not only to candidates for office, but to every man who offers himself to vote, and especially to jurors, who are concerned in the administration of justice.

The latter part of the oath is equally new and repugnant to sound principles of government. The oath hitherto imposed upon persons entering into a public trust is the ordinary oath of office, importing that they will execute their trust faithfully, and importing nothing more, and when the trust ceases the obligation of the oath also expires. But the oath in this case is that they will refrain from a particular crime, having no special relation to their office, not only while in office, but during the continuance of the act, or while inhabitants of this State. This is binding, by a religious solemnity, and for life, one class of citizens to the exclusion of the rest, and in their private as well as public capacity, to obey a law equally applicable to all the community. There is no reason why the oath should apply to them when they become private citizens, any more than to the rest of the people. It is also very questionable whether it be wise or expedient to bind private citizens by oath to obey any particular law that is of public and permanent concern. The impression of an oath is apt to be weakened in proportion as it is less special in its object, and less immediate in its application. The civil obligation to obey the law is the same without as with the oath, and to call in the aid of religion to the support of a single case only in the penal code, may impair the force and sense of obligation to general obedience. This extraordinary sanction may as well be applied to every as to any public law; and the effect of such a provision upon the efficacy of oaths, and the consciences of those who take them, would, as we fear, be exceedingly injurious.

It is no doubt the duty of the lawgiver to provide suitable penalties for the violation of every law, but we apprehend there

is no instance to be met with in the ordinary course of civil government, in which the citizens were called on to bind themselves by oath to the perpetual observance of any public law. All that is precious and valuable in society, property, liberty, character and life, essentially depend upon the credit of testimony upon oath, and every measure that diminishes the reverence or impairs the confidence due to that great sanction to truth is most deeply to be deplored.

APPENDIX, A.

R E P O R T

OF MICHAEL ULSHOEFFER, CHAIRMAN OF THE SELECT COMMITTEE TO WHOM WERE REFERRED, BY THE ASSEMBLY, THE OBJECTIONS OF THE COUNCIL OF REVISION TO THE BILL ENTITLED "AN ACT RECOMMENDING A CONVENTION OF THE PEOPLE OF THIS STATE," (N. Y.) COMMUNICATED TO THE ASSEMBLY JANUARY 9th, 1821.

The committee report to the House that they have examined the said objections, and have bestowed their deliberate attention upon the subject.

It is certainly to be regretted that so much agitation has been produced in the public mind by the course which the bill in question has taken. The opinion of the Council, independent of its constitutional effect, has heretofore been much respected. But on this occasion it has perhaps been less estimated, owing to the division of opinion existing among the members of the Council, as well as to serious doubts entertained whether the objections of the majority are at all well founded, and to a question, moreover, whether the Council possess the constitutional power arbitrarily to object to the passage of bills, upon mere opinions, vaguely expressed, respecting their propriety or expediency.

It may well be doubted whether the Council of Revision was ever intended as a legislative branch of the government, or in effect to exercise the powers of legislation. Such a construction cannot fairly be given to the Constitution. The third article declares that "whereas, laws inconsistent with the spirit of the Constitution or with the public good, may be hastily and unadvisedly passed," and for this reason the Council was established to

revise all bills about to be passed into laws by the Legislature. And it cannot be believed that this article ought to receive so liberal a construction as to give the Council legislative powers, or to authorize them to object to any bill upon questions not of plain constitutional doubt, or of substantial and paramount considerations of public good.

This bill (as your committee conceive) is not inconsistent with the spirit of the Constitution, for that instrument is silent as to its amendment, and the bill is framed in conformity to the spirit of the only precedents that have taken place in our own State, and in other States under like circumstances. It is not inconsistent with the public good, for the public voice has called for this law. It has not been hastily and unadvisedly passed, for it has been the subject of public discussion, by the people and in the Legislature for years. Yet the Council have, on their own responsibility, chosen to construe this act as, in some way or other, unwise, unsafe or inconsistent with the spirit of the Constitution. And such is the organization of the powers of the Council (whatever doubts may exist as to the constitutionality of their exercise in the present case), that no alternative remains but to carry the law into effect, if possible, by a vote of two-thirds of the members present in each house.

If, in a more ordinary legislative act than the present, the Council interposed ambiguous objections, however trivial they might seem, and denied the evidence upon which a law was founded, still the consequence appears to be the same. For although "the supreme legislative power within this State" is vested in "two distinct bodies of men," viz., the Senate and Assembly, "who together shall form the Legislature,"¹ nevertheless, the Council may, by their construction, declare any act to be inconsistent with the spirit of the Constitution or the public good, or improper, inexpedient or unwise; and in this way they would coerce the Legislature to pass all laws by a vote of two-thirds of each house; thereby establishing a third branch of the legislative authority as odious in its features as would be a Senate for life. This never could have been contemplated by the framers of our Constitution, and it is at variance with the principles of republican government. In the present

¹ Second Article of the Constitution.

case, although the Council seem to insinuate as the ground of their objections to this law, that it is inconsistent with the spirit of the Constitution, yet there is much difficulty in saying under what particular head they range their objections; but they unequivocally assume to prescribe to the Legislature "the most wise and safe course" of calling a convention contrary to the manner in which our Constitution was itself formed, and contrary to a precedent under that Constitution, sanctioned by a previous Legislature and Council. But it is profitless to dilate further on this head. The subject is thus noticed as one furnishing additional proof of the extent to which the authority of the Council may be carried. And when a convention is assembled, it remains to be solemnly determined whether such an exercise of power is in conformity to the letter or spirit of our charter; and whether a Council (all of whom, except the Executive, are independent of the people) should be allowed any longer to enforce so dangerous an authority.

Being thus necessitated to consider these objections as properly taken, it remains to decide if they are well founded.

Let us notice the manner in which the first convention was ordained in this State in 1777.

When the regular frame of Colonial government was dissolved, the people elected delegates to a Congress and committees. And this "government by congresses and committees" they considered as "temporary expedients, and to exist no longer than the grievances of the people should remain without redress."¹ But many and great inconveniences were found to attend this mode of government. The Continental Congress therefore "recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigency of their affairs had been established, to adopt such government as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general."

The State Congress therefore resolved that "Whereas, doubts have arisen whether this Congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form

¹ 1 Revised Laws, 29.

of government, and internal police, to the exclusion of all foreign jurisdiction, dominion and control whatever. And whereas, it appertains of right to the people of this Colony to determine the said doubts: therefore

"Resolved, That it be recommended to the electors in the several counties in this Colony, by election in the manner and form prescribed for the election of the present Congress, either to authorize (in addition to the powers vested in this Congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government, as in and by the said resolution of the said Continental Congress is described and recommended; and if the majority of the counties, by their deputies, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties and happiness of the good people of this Colony."¹

The general Congress which recommended as above, acted under a league of the States; and the State Congress was a kind of temporary State Legislature. Yet this State Congress did recommend the election of delegates to a general convention. The people confirmed the act of the State Congress by the election of delegates; and those delegates formed our present State Constitution. There was no preliminary question as to the expediency of the measure submitted to the people, nor any submission of the Constitution itself. The election of the delegates was the only decision by the people in 1777.

Our Constitution containing no provision for its own amendment, we were left, when occasion should require, to establish some mode of alteration. It was not until about the year 1800, that a necessity appeared for calling a convention.

Governor Jay, at the opening of the session (November 4, 1800), by message, requested of the Legislature "that provision should be made by law for electing a convention, for the sole and exclusive purpose of ordaining what shall be the number of senators and representatives at future periods, and of fixing the limits, which it shall at no time hereafter exceed." To this, however

¹ 1 Revised Laws, 30.

the Legislature added the power of determining a question, violently agitated at that time, respecting the rights of the members of the Council of Appointment.

And this additional authority was granted rather in opposition to another message of Governor Jay (February 26, 1801), who desired the Legislature themselves to pass a "declaratory statute" on the subject, or refer it to the judiciary. Yet, with everything at that time calculated to call for a strict scrutiny of legislative powers, the act passed on the 6th of April, 1801.

It provides "that it shall and may be lawful and it is hereby proposed to the citizens of this State to elect, by ballot, delegates to meet in convention, for the purpose of considering the parts of the Constitution of this State, respecting the numbers of senators and members of Assembly in this State, and with power to limit and reduce the number of them, as the said convention may deem proper; and also for the purpose of considering and determining the true construction of the twenty-third article of the Constitution of this State, relative to the right of nomination to office; but with no other power or authority whatsoever."

During the passage of this law in the Assembly an attempt was made to introduce a prior appeal to the people, as to the expediency of calling a convention, but the attempt was defeated.¹ In the Senate an equally unsuccessful attempt was made to apportion the number of delegates to be chosen to the convention according to the State census, which was then on the point of being made.² The bill, however, passed without providing for any reference to the people in the first instance, as to the expediency of calling a convention, and without submitting to their approbation the alterations after they had been made. Thus leaving to them only the right to choose delegates in conformity to the rule of 1777, and implying from the votes of the people, an approbation of the convention, and an approval of the alterations which should be made by their delegates.

The history of the act of 1801 presents some other remarkable facts. We find among the names of the senators voting for that act, those of our present Governor De Witt Clinton, and of our present Chief Justice Ambrose Spencer. We find these same

¹ Assembly Jour., 1801, pp. 236, 237, 244. ² Senate Jour., 1801, pp. 48, 71, 122.

gentlemen voting against a new apportionment of the delegates according to the census then about to be taken. And we consider this as the more worthy of remark, as these gentlemen were two of the members of the Council of Appointment who differed with Governor Jay; men who doubtless had pondered well the course which they were pursuing, and who, on the subject of the convention, as well as on the dispute respecting the appointing power, might well be supposed (to borrow their own language) not "to be actuated by an ambitious competition for power, or by an unwarrantable spirit of party."¹ Yet we are called upon at this late day to believe, as these same gentlemen would now represent, that it was, in 1801, more "*advisable* that the previous sense of the people *should have been taken*." And they now likewise represent, contrary to the act of 1801, the expediency and fitness of a new apportionment of delegates to the proposed convention.

This law passed the Council of Revision unanimously. The Council was then composed of Governor Jay, Robert R. Livingston, John Lansing, Morgan Lewis, Jacob Radcliff and James Kent. Messrs. Livingston and Kent were absent when the act was passed by the Council. All these gentlemen had the right and power of objecting to the law. And if the Executive had entertained a doubt of its constitutionality, or even of its expediency, he might have sent expresses for the absent members to any part of the State.

The number of delegates to that convention was one hundred and eight. Of these, seventy came from the counties on the Hudson, from Long Island and Staten Island. The northern and western counties were represented by thirty-eight delegates. As might naturally be expected in a new and growing State, where a census is directed to be taken once in seven years, the census of 1801, taken subsequently to the passage of the law for a convention, varied considerably the apportionment of members from what it was fixed at seven years previously. A prospective census would always show, as in that instance, an excess in some cases and deficiency in others, in the number of members from the counties. The delegates were, however, elected by all the free citizens of this State, aged twenty-one years and upwards.

¹ Assembly Journal, 1801, p. 201.

Here then, it will be seen, was a convention called with no previous or subsequent reference to the people; and one, moreover, which was restricted in its powers by an act of the Legislature, on the sanction given to that act by the votes of the people for delegates. If it was necessary to add the weight of names to the precedent of 1801, we could cite a catalogue from all classes of politicians who belonged to the Senate and Assembly, and Convention of that year; men whose characters would do honor to any State, and whose talents would stamp with authority any act in which they unitedly participated.

Having thus shown the origin and adoption of the Constitution of this State, and of the amendments thereof, your committee will next call your attention to that of the United States.

The Constitution of the United States was formed in September, 1787. The old Congress *recommended* the State *Legislatures* to appoint delegates to revise the old Articles of Confederation.¹ There was no previous reference of the question to the people. Instead of amending the old Articles, the Convention made an entirely new Constitution. This was an act of sovereign authority by the Legislatures in time of peace; the public safety being guarded by the subsequent reference of the Constitution to the people of each State in Convention, held "under the recommendation of its Legislature."²

Your committee cannot forbear to cite a few excellent remarks applicable to this occasion, and to the notice just taken of the convention of all the States in 1787. They will be found in No. 41 of the *Federalist*.³ Speaking of the authority which, instead of amending the old Articles of Confederation, formed the present Constitution of the United States, Mr. Madison remarks: "It is time now to recollect that the powers were merely *advisory* and *recommendatory*; that they were so meant by the States, and so understood by the Convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed." Immediately afterwards, noticing the conduct of the opposers of the proceedings of the Convention, amongst other

¹ 1 Laws U. S., 59, 70, 72.

² 1 R. L., 24.

³ Vol. 1, ed. 1802, pp. 266, 267.

things, he urges that it could not "have been forgotten that no little ill-timed scruples were any where seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed was to be submitted to the people themselves, the disapprobation of this supreme authority would destroy it forever; its approbation, blot out all antecedent errors and irregularities. It might even have occurred to them that where a disposition to *cavil* prevails, their neglect to execute the degree of power vested in them, and still more, their recommendation of any measure whatever, not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies. Had the convention, under all these impressions, and in the midst of all these considerations instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay, and the hazard of events; let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or, if there be a man whose propensity to condemn is susceptible of no control, let me then ask, what sentence he has in reserve for the twelve States who usurped the power of sending deputies to the convention, a body utterly unknown to their Constitutions; for Congress, who recommended the appointment of this body, equally unknown to the confederation; and for the State of New York, in particular, who first urged and then complied with this unauthorized interposition."

The legislative right to call a general convention was exercised by the Connecticut Legislature in 1818.¹ In that State, there was no constitutional provision on the subject; and by the recommen-

¹ Niles' Register, vol. 14, p. 309.

datory resolution which they passed, there was no prior, but there was a subsequent reference to the people, as proposed by the bill now under consideration.

It now becomes necessary to trace the history of the convention bill before us.

Independent of other subjects of complaint, which are eminently entitled to deliberate attention, the great grounds of dissatisfaction towards our Constitution, are the state of the elective franchise, and the nature of the appointing power. If the "declared sense of the American people, on the very point, cannot but be received with great respect and reverence," our Constitution, as to the elective franchise, cannot be denied to require amendment. In this particular, the constitutional provisions of our sister States are in decided variance with ours; and the Council of Revision might have had as little doubt as the Legislature, that our citizens are almost unanimously in favor of altering our charter, so as to conform more nearly to those of our sister States. It was to have been hoped, too, that in respect to the Council of Appointment, no doubt could be entertained of the opinions of the people. If ever there was a feature in a Constitution universally condemned in its present shape, it is that which regulates the appointing power.

By a reference to the journals of the Legislature, their proceedings, and the course of public opinion, on the subject of a Convention, may be clearly traced; and the different publications of the day contain the debates and other discussions on the various points. On the 13th of February, 1818 (41st session), Mr. Edwards, in the House of Assembly, brought in a bill for a Convention, "for the purpose of considering such parts of the Constitution as relate to the appointment of officers." The various proceedings had thereon will be found in pages 345, 346, 354, 355, &c. The legality of an act recommending the election of delegates was not questioned. But success did not attend this effort. In the forty-second session, January 12, 1819, the subject was again agitated. It was again attempted to call a restricted Convention for the same object; but the undertaking failed, although no doubts were suggested as to the recommendatory authority of the Legislature. (See pages 92, 95, 156, 161, 336, 450, &c.) At the opening of the forty-third session in January, 1820, the present

Executive, whose duty it is to recommend such matters to the Legislature "as shall appear to him to concern its good government, welfare and prosperity," stated to them, in his speech, that "the Constitution of this State was formed nearly forty-three years ago," and "that attempts have been made at various times to call Conventions to introduce alterations, which have only succeeded in a single instance." After loudly proclaiming the necessity of altering "the appointing power," he adds, "and I have no hesitation in recommending a Convention for this and such other purposes as may be imperatively required by the public welfare; and I do this under a full persuasion that the powers of the Convention cannot transcend the objects committed to their cognizance, by the concurrent act of the Legislature and people."¹

Now, it may be asked, who is here requested to decide on "such other purposes" as the "public welfare" requires to be submitted to the Convention! Certainly, the Legislature. And the "concurrent act of the Legislature and people" (in the recommendation of the election and in the choice of delegates) is a sanction of the whole proceeding, without any prior or after reference to the people, according to the "single instance" of 1801. He speaks of attempts "to call Conventions" as being frequently made, and as calls for the exercise of legislative authority; and attributes their failure to fears on the part of the Legislature "that an innovating spirit might predominate."

That part of the Governor's speech was referred to a joint committee of the Senate and Assembly,² who, on the 18th January, 1820, reported: "the committee, on this occasion, cannot forbear to remark, that whilst they witness in our sister States, generally, a disposition to embrace the opportunity presented in the present favorable state of our affairs as a nation, of introducing such wise and salutary measures of improvement as the times seem peculiarly favorable for carrying into effect, in this State, unfortunately, though a like disposition is ardently cherished by a great part of community, our energies are almost rendered nugatory by our divisions" into parties, &c. They "recommend the calling of a Convention" for the purpose of considering that part of the Constitution relative to "the Council of Appointment;" that part

¹ Assembly Journal, 1820, pp. 15, 16. Assembly Journal, 1820, p. 29.

which "relates to the Council of Revision, and that which determines the qualifications of voters at elections." And the committee express decided opinions in favor of the extension of the elective franchise, of altering the appointing power, and of curbing the authority of the Council of Revision.¹

This committee was friendly to the present Governor, and framed their bill according to the speech, but did not provide for any reference to the people other than the choice of delegates.

But when the Assembly acted on the bill, Mr. Attorney-General Oakley, after declaring in his introductory remarks "that the public voice is now in favor of a Convention"² moved an amendment, by which provision was to be made for an unrestricted or general Convention; in which event he suggested that he would propose to refer the proceedings of the delegates to the decision of the people. His proposition failed by a small majority.³ He did not, however, even intimate a *prior* appeal to the people. After many other efforts, an attempt was made to put the question to the people to vote, first, for a general Convention; second, for a special one; or, third against any Convention. This proposition was carried by a small majority in committee; but the House, by refusing the committee leave to sit again, put an end to the question of a Convention at that session.⁴

This brings us to the present session (44th), at the opening of which, November 7, 1820, Governor Clinton again recommended the subject. "The Constitution (he says) contains no provision for its amendment: In 1801, the Legislature submitted two specific points to a Convention of delegates chosen by the people, which met and agreed to certain amendments. Attempts have been made at various times to follow up this precedent, which have been unsuccessful, not only on account of a collision of opinion about the general policy of the measure, but also respecting the objects to be proposed to the Convention. These difficulties may be probably surmounted, either by submitting the subject of amendments generally to a Convention, and thereby avoiding

¹ Assembly Journal, pp. 110, 111.

² Albany Argus, February 15, 1820.

³ Assembly Journal, 1820, pp. 426, 427.

⁴ Assembly Journal, 1820, pp. 441, 442.

controversy about the purposes for which it is called, or by submitting the question to the people in the first instance to determine whether one ought to be convened. And, in either case, to provide for the ratification by the people, in their primary assemblies, of the proceedings of the Convention."

The last of these propositions, in point of order (*viz.*, to submit the question in the first instance to the people), appears evidently to have been intended by the Governor as the least acceptable in his opinion; and only to be resorted to, in case the Legislature could not agree to recommend any Convention.

In conformity to the first suggestion of this speech, of "submitting the subject of amendments generally to a Convention," the bill now before us was passed by both branches of the Legislature; and was subsequently received back, by this House, from the Council of Revision, with OBJECTIONS, upon the casting vote of that Governor who requested the enactment of the law.

Your committee are as fully satisfied as the Council can be that "the Constitution is the will of the people expressed in their original character, and intended for the permanent protection and happiness of them and their posterity; and it is perfectly consonant to the republican theory, and to the declared sense and practice of this country, that it cannot be altered or changed in any degree, without the expression of the same original will." The question, however, to be decided is, in what manner the expression of this will is to be obtained? The main point seems to be, that any change of the Constitution must be by the act of the people. This has, heretofore, in this State, been considered to be effected by the choice of delegates by the people. The act of the Legislature was deemed legal, in calling for the election of delegates, as the act of the people. No such law, it was taken for granted, would be passed, but in accordance with the public wish. The delegates represent the people, and act agreeably to their interests; and if such a case could occur as a Convention being called by the Legislature when none was desired by the people, it would be merely nugatory in its effects, as the delegates of the people would of course adjourn without any proceedings.

In examining this subject, it seems unnecessary to draw any distinction between general and restricted Conventions. We have

before quoted examples of both; and there is no rule which is applicable to the one, nor any reasoning which is not equally so to the other. If the *prior* "expression of the original will" is necessary before the Constitution can be "changed in *any degree*" (as the Council suggests), then a single alteration thus made is as unlawful and improper as would be the remodeling the whole frame of government.

But when it was notorious that, for years, attempts had been made in the Legislature to call restricted Conventions; when the objects for which a Convention was desired by the people were so well known; and when even the Executive of this State had advised to the course of calling a *general* Convention, in order to make those special amendments, so necessary to the well-being of the State, it was not to have been expected that the Council would throw upon the people, or the Legislature, the foul imputation that the Constitution would be "probed and perhaps disturbed to its foundation." If such an imputation was to have been indulged, they might rather have turned their eyes towards an individual who advised the measure, and then gave the casting vote against it. If there was any danger, of false professions, or improper views, might not the charge have been, with more fairness and coloring of truth, visited upon those of whose unsteadiness of principle the Council certainly had "legitimate and authentic evidence" in the journals of 1801.

Many of the facts and circumstances before detailed, may be viewed as the evidence of public sentiment respecting the necessity of a Convention in this State; and the proceedings of the Legislature, especially at so many sessions, may be likewise regarded as the opinions of enlightened men, respecting the authority of the Legislature to recommend the choice of delegates. Indeed, the course of things at the last and previous election justifies the inference, that the people acted, in some measure, in reference to this question; and the passage of this bill cannot but be regarded as a conclusive proof of the public opinion. Nay more; if we turn our attention to the proceedings of the people as ascertained by public meetings and publications, the right of the Legislature to recommend the choice of delegates always has been admitted. Nor can a single instance be found, prior to these objections from the Coun-

cil, where the people have ever claimed that a previous submission should be made to them as to the expediency of calling a Convention. Even so late as the year 1820, a certain pamphlet, extensively circulated by a committee devoted to the views of the Governor (which was laid on the tables at the last session) and written with a view "to promote the amendment of an ill-balanced Constitution," ridicules the idea of a Convention emanating from the people in the first instance, as being "neither practicable, definite or rational," and not only unqualifiedly denies that a Convention can in any manner be restricted, but declares the method of calling a Convention by an act of the Legislature to be "certainly the most safe, sure, practicable plan that can be adopted."¹

But the Council have no "legitimate and authentic evidence," and they deny that any exists, of public opinion calling for this Convention. Independent of the public discussions on this subject, and the proceedings of the people, which they must have seen and heard, the acts of the Legislature, and the recommendations of the Governor, ought certainly to have been received as the test of public opinion. What other evidence do they require? or is it to be conceded that the Council are to receive petitions and proofs, and to act in all things as a legislative branch of the government? The two Houses of the Legislature, elected by the people, are responsible for the facts upon which they proceed.

Besides, the formal, strict and technical evidence of the science of law cannot be transferred into legislation; and that may be sufficient proof to ground important political transactions upon, which would not be received in the same form in a court of justice.

Let us now briefly notice the "declared sense of the American people" as to the provisions of the bill before us, so far as that sense may be gathered from discordant constitutional provisions.

The present Constitution of the United States may be amended by the proposition of Congress to the several State *Legislatures*; or of one State Legislature to the rest; or by the States requesting Congress to call a Convention; or by Conventions of the people in three-fourths of the several States.

Somewhat similar in principle, are those State Constitutions in which alterations emanate from the ordinary legislative bodies and

¹ "The Appeal," pp. 75, 78, 79, &c.

are afterwards submitted to the confirmation, either of the votes of the people, or of a Convention of the people, or subsequent legislative bodies, viz., Maine, Connecticut, Maryland, Georgia, and the proposed Constitution of Missouri.

In Vermont, amendments are proposed by a body of censors, directed to be chosen once every seven years by a provision in the Constitution of that State. The censors call a Convention, and publish the proposed amendments, but there is no after reference to the people.

The State Constitutions in which the opinions of the people in their original capacity is required to be taken on the expediency of calling a Convention are those of New Hampshire, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi and Illinois.

Delaware and South Carolina are not ingenuously quoted by the Council, as they contain a double plan of amendment; and can be assigned to neither of the preceding classes. By the Constitution of Delaware, two-thirds of the Legislature may propose amendments; and if three-fourths of the next Legislature approve thereof, the same are part of the Constitution. This plan of amendment being prescribed to the Legislature, it is further provided that they shall not call a Convention for that purpose, without the previous assent of the people. The same provisions, in substance, exist in the Constitution of South Carolina. And the propriety of thus restricting the Legislature as to a Convention, is manifest in those instances where the other legislative mode of amendment exists. But in neither case is there any subsequent reference to the people.

The Constitutions of New Jersey, Pennsylvania, North Carolina, Virginia, and of our own State, present no provisions as to amendments. Nor does the charter of Rhode Island.

The Constitution of Massachusetts does not contain any provision for its future revision; and although it did provide simply for amendments in the year 1795, by referring the preliminary question to the people (which seems to have continued to be the practice of the State) yet, in relation to the effect of such a provision, Governor Brooks, in his message of January 13, 1820, makes a pertinent remark. "As that article was designed for the particular case of a revision in the year above mentioned, it does not

seem reasonable to conclude that the general power of the Legislature can be abridged by that specific provision.”¹

The Council quote instances to prove “that though the people be not previously consulted on the question (of the propriety of calling a Convention), yet a more than ordinary caution and check upon such a measure was indispensable.” In the first place, this idea being opposed to the practice of our own State, it is carrying the doctrine of construing our rights and duties by the provisions of other States, to a most dangerous and unwarrantable length. In the next place, it will be found that the two-thirds required in South Carolina and Georgia (quoted by the Council) are upon the vote on making the amendments. In both cases a publication for three months is made; and in the next Legislature, two-thirds are necessary, to agree to the amendments prescribed by the previous Legislature.

Thus, it appears that when the Legislature are to make the amendments, two-thirds are required to agree: but where the Legislature have nothing to do with the amendments, and merely recommend the election of delegates for that purpose (as in this State and Connecticut), a majority is sufficient, especially when those amendments are to be decided upon, not by a subsequent Legislature, but by the votes of the people themselves.

The Council are incorrect in stating that the Constitutions of Georgia and South Carolina, are alike in prescribing that no Convention shall be called, but by a vote of two-thirds of the Legislature. That clause is not in the Constitution of Georgia, and the case of South Carolina has been noticed before.

It will thus be seen, that none of the Constitutions where there is a prior appeal to the people, require any subsequent reference, with the single exception of New Hampshire; nor is any other instance to be found, when there is a subsequent reference of the amendments, that the prior appeal is required.

It would therefore seem to be a constitutional principle, to be drawn from most of these cases, that at some stage of an undertaking to amend a Constitution, a reference should be made to the people: but whether that be prior, or subsequent to a Convention, seems not material, especially in those cases where the amendments

¹ Niles' Register, vol. 5 (New Series), p. 370.

are not made by the Legislature, but by delegates of the people chosen for that special purpose; and indeed, the latter method (a question to be decided by the votes of the people, upon the final ratification of the amendments) is, in the opinion of your committee, the best safeguard to life, liberty and property.

Nevertheless, it must be manifest that the various and discordant constitutional provisions of other States, whatever they may be, cannot be called in to check the legislative powers, or to prescribe the duties of those States which, like our own, have no provisions in their Constitutions on the subject of amendments. Even out of the eleven provisions quoted by the Council, seven existed anterior to the act of 1801, and were disregarded as no authority; all tending to prove, that the recommendatory power is possessed by the Legislature, unless restricted; and that the Legislature must decide upon the propriety of exercising it; a rule fully recognized by the Convention of all the States in 1787.¹

But whilst we admit the general principle, as far as one can be gathered from all these Constitutions, it merely proves that the knowledge of proposed amendments, before their being finally adopted, should be brought home to the people, so that they may be enabled, either by a Convention, or in a subsequent Legislature, or by direct votes, to give their opinion upon them. This is the whole sum and substance of the principle.

The bill now under consideration, is conformable to this principle, inasmuch as it provides, that the people shall elect their own delegates to make the amendments, and for subsequently submitting the amendments, to the decision of those who made choice of the delegates, viz., "all free male citizens of this State of the age of twenty-one years and upwards." If the people approve, the proceedings of the Convention are part of the Constitution; if not, those proceedings are nugatory and void.

But it is further objected by the Council, that the bill contemplates submitting the question on the amendments *in toto*, and not affording an opportunity to discriminate as to those amendments. This provision, upon the whole, appears to your committee a matter of expediency. A Constitution is a work of system, in which every part is so connected with the whole, and the whole with

¹ 1 Revised Laws, 24.

every part, that it is hardly in the power of human wisdom to strike out particular portions without deranging the economy of the whole. A Convention is best calculated for such an undertaking. Indeed, it might be urged, with great force, that the proceedings and decisions of a Convention, like those of all large deliberative bodies having a variety of interests and feelings to contend with, must be a work of compromise, where the whole, and not all the several distinct parts, are agreed to by the Convention, and should be thus submitted, upon the whole, to the people; otherwise, it would be found difficult to unite a majority, either of the Convention or of the people, in favor of every part; and, consequently, the whole system would be deranged, by discordant opinions and interests. If propositions, distinctly stated, are negatived, what remains? Does not anarchy ensue? Or are the people not only to strike out, but to amend the proceedings of the Convention? If so, the powers of the Convention, in promoting the public good, by reconciling the conflicting interests and opinions, are wholly nugatory; and a whole system, which they might adopt for government, or for any particular feature in the Constitution, might readily be thrown into confusion by questions upon its distinct parts; nay the appointment and powers of a Convention, in such a case, would be entirely useless, inasmuch as the people, if they are not too numerous for the purpose, and if they cannot delegate their authority in that respect, might certainly as well form the whole plan themselves as to judge of it, not only upon the whole but upon its distinct parts: and in the latter case, also, necessarily to form new features in the place of those which they reject. It is the general tenor of all constitutions, laws and public proceedings which, being the work of conciliation and compromise, are accepted by the people. Each portion of the representatives yield something to unite a majority upon the whole plan. These remarks are equally applicable to the proceedings of a limited or a general Convention. For if, in the proposed Convention, a compromise of interest and opinions was effected, by which the popular branch of the Legislature surrendered its power of electing the Council for the appointment of all officers, to the Senate, in consideration of the extension or equalization of the elective franchise; and if the former amendment was to be

approved, upon a distinct vote, and the latter rejected, then the whole reason and equity of the compact, plan or undertaking would be totally destroyed, and the fair intentions of the Convention be entirely subverted.

The submission of the United States Constitution to the States, to be approved or disapproved, *in toto*,¹ is a strong instance in favor of this position; for no one will deny that the State Conventions, in that instance, were better adapted to deliberate, and to decide on the parts to be accepted or rejected, than meetings to be held but for three days at the polls. In that case, the Constitution was generally admitted to be defective in certain parts; and the question was, whether, upon the whole, it was desirable. It was adopted, leaving it for the constitutional authority, afterwards, calmly and deliberately, to modify and correct the instrument.²

The present Constitution of Connecticut was likewise submitted, *in toto*, to the people of that State, in 1818. Indeed, no instance, it is believed, is to be found in which a reference for decision was made according to the instruction of the Council. The proposition offered in the present Convention of Massachusetts, to submit their doings separately to the people, is the only case where such an idea appears to have been the subject of serious deliberation; and it still remains to be seen whether it is possible for that Convention to adopt a principle heretofore considered wholly impracticable, and never acted upon, as your committee believe, in a single instance.

One other idea is hinted by the Council, viz., a delay of the Convention until the taking of a new census. A *State* census? That will not be taken till late in the year 1821, and before the returns can be made out, and a law be passed, the year 1822 would expire. A *United States* census? The Legislature of 1801, although situated in all things as we now are, and having the same means of obtaining the United States census, never even ventured to attempt to apportion the delegates according to it. The Council of Revision, sworn to support our Constitution and laws, we cannot presume, either advise or direct such a basis of

¹ 1 Revised Laws, 24.

² 1 Revised Laws, 26.

apportionment. In case, however, it is decided to delay for either census, the Legislature will set a precedent, by which upon such pretexts, they will constantly be called upon to withhold acting on important bills. But we could not act upon the United States census at this session, even if it were proper. The enumeration is taken upon different principles from those of the State; and the arrangement of the classes of population would prevent our obtaining the DATA necessary for a complete apportionment of the delegates.

So far as an exact and justly proportioned division of delegates or representatives can be periodically obtained, according to our Constitution, it is certainly necessary and desirable; but it may well be questioned whether it would be conformable to the spirit of our Constitution to alter the appointment until the regular State census is taken.

In the case of the Conventions of 1777 and 1801, no regard was paid to the circumstance of inequality, as it might appear by a prospective census; and in the before mentioned case of Connecticut, the delegates were the same in number as the members of Assembly. We certainly have no rotten boroughs in our State; we are all represented; and our counties, once in seven years, are assigned their proportion of representatives according to their number of electors. The provision of the Constitution of Maine, in this respect, which (after directing a census and apportionment every ten years), declares that "the rights of representation so established, shall not be altered until the next general apportionment," is in conformity to the practice of all the States, as far as we know, where there is no similar constitutional declaration.

Every ten years Congress direct a census.¹ The representation is, nevertheless, considered sufficient, as well on the ninth as on the first year, to authorize them to propose amendments to the Constitution; and the ratification thereof, by the legislatures, may be made under as great or even a greater degree of inequality.

In the Constitution of Tennessee, provision is made for taking an enumeration of the inhabitants every seven years, at which time the representatives are apportioned; and in the same Constitution, the Conventions which may be called, are directed "to con-

¹ Article 1, § 2, Constitution of the United States.

sist of as many members as there be in the General Assembly." In Ohio, Louisiana and Kentucky, the census is directed to be taken every four years. On this census the delegates are, in like manner, apportioned. A similar provision may be found in the Constitution of Mississippi.

The principle of apportioning the delegates to a Convention according to the number of representatives assigned under the last preceding State census, is thus sanctioned by the practice of our own State, by the constitutional provisions of other States, and by every law calling a Convention, which has come to the knowledge of your committee.

Furthermore, according to our last State census, the northern and western counties of the State, which in 1801 had only thirty-eight delegates in Convention, out of one hundred and eight, will now have seventy-four out of one hundred and twenty-six; whilst the southern and North river counties, which in 1801 had seventy out of one hundred and eight members, will now have but fifty-two out of one hundred and twenty-six.

Inasmuch, therefore, as "all free male citizens of this State, of the age of twenty-one years and upwards," are to vote for delegates by the bill before us; and believing that the difference by a new apportionment of delegates in favor of any part of the State would be totally negative in its effects, and that the present apportionment could not be altered but by a delay much to be deprecated in its consequences, your committee do not consider this a ground for suspending proceedings relative to a Convention, more particularly as the amendments are ultimately to be submitted to the decision of those who elected the delegates.

The evils under which this State has labored from the defects of her Constitution are so great, and the call for alleviation so loud; the subject has been so long before the people and before the Legislature; it has been so thoroughly examined, and is so well understood, that your committee cannot but look upon a bill fixing the earliest period, consistent with a fair opportunity of suffrage, for the choice of delegates, as that best calculated for the exigency of our affairs.

The second Tuesday in February is a day sufficiently distant in the present state of public information for all beneficial purposes;

and the final appeal to the people will afford full and ample opportunity to protect the public principles of the State.

In every view, then, which your committee can take of this subject they consider the objections of the Council as themselves inconsistent with the spirit of the Constitution, and in no respect well founded; and they are also of the opinion that the said bill, entitled "An act recommending a convention of the people of this State," ought, notwithstanding the objections of the Council of Revision, to be passed into a law.

On the fifteenth January succeeding the report, the House agreed with that report, but on the question whether they should pass the bill notwithstanding the objections of the Council of Revision, refused to pass it, and consequently it failed to become a law. Forthwith, on motion of Mr. Ulshoeffer, a committee was appointed "to take into consideration the said subject of a Convention, and to report thereon, by bill or otherwise, with all convenient speed."

The committee consisted of Michael Ulshoeffer of New York, John C. Spencer of Ontario, William Thompson of Seneca, Simeon Ford of Herkimer, and Erastus Root of Delaware.

Immediately upon this, Mr. J. C. Spencer, in pursuance of previous notice, brought in a bill entitled "An act to obtain the authority of the people of this State for the meeting of a Convention to revise the Constitution, and to provide for the election of delegates to such Convention, when authorized to be held." This bill was read twice and referred to the above select committee.

On the seventh of February, the said committee, by Mr. Ulshoeffer, their chairman, reported

"That they have performed the duties assigned to them, and submit the result of their deliberations with a strong reliance that it will be satisfactory.

"The recent meetings which have been held in the several counties of this State, in addition to the prior expression of the public opinion, must have obviated the doubts of the most skeptical, as to the voice of our citizens being in favor of a Convention. When we consider that the subject of a Convention has been so long

before the Legislature and before the public, and how general an expression of sentiment has been heretofore and recently pronounced in favor of that measure, your committee consider that a sound reason cannot be given for putting a previous question as to the expediency of a Convention.

"By the custom of our State, the Legislature has an undoubted right to recommend the choice of delegates without any previous question as to the expediency of the measure, and without any submission of the amendments that may be made. The choice of delegates, according to our practice and experience, is a sufficient guard and security. This legislative power to recommend has been frequently exercised in our State, and has been found salutary in its effects. Of the three Conventions which have been called in our State, not one affords an instance of a previous question.

"If, however, the provisions of other States were to bind the Legislature and people of this State, still the alternative would be offered to follow those precedents which prescribe a previous question, or those which prescribe that the amendments themselves shall be submitted to the decision of the people; or we might conform to any of the other discordant precedents of the subject. But we are not tied down to the precedents of other States, and cannot therefore be told that our legislative powers are to be meted out to us, not according to our own constitutional practice. If, however, the representatives of the people, according to the wishes and interests of their constituents, think it expedient to require the amendments which may be made by the Convention to be submitted to the people for their determination, it is their own right so to do. But this is not to be considered as sanctioning the idea that the various prescriptions of other States, which have been made by Conventions, are to be strictly followed by our Legislature. We unquestionably have the right to call a Convention according to our own practice. As it respects the practice of our sister States who put the previous question, but do not refer the amendments to the decision of the people, your committee cannot recommend that such a course should be adopted. The reference of the amendments which may be made, to the final vote of our citizens, is a valuable feature which your committee recommend

in preference to a superfluous and unnecessary vote as to the expediency of a Convention. And when we pay a just regard to the voice of the people of this State, as to the question of the propriety of a Convention (a voice which has been so recently and so unanimously expressed by all classes of citizens), the very origin of this Convention may be ascribed emphatically to the demands of the people.

"The report on the subject of a Convention, made on the ninth day of January last, contains the history in detail of but two of the three Conventions which have been called within this State. The one of 1777 was authorized *by* a resolution of the State Congress; that of 1788 was called by a *joint* resolution of the two houses of the Legislature, and that of 1801 was called by a *law* which is mostly a transcript of the resolution of 1788. The two former were general in their powers, and the latter restricted. There can be no doubt, as your committee conceive, of the right of the Legislature to recommend a Convention by either method. Inasmuch as the proceedings of the Legislature of 1788, relative to the Convention of that year, were not fully noticed in the before mentioned report, your committee have annexed the same hereto. All the precedents of our own State abundantly prove that the Legislature may call a Convention by resolution or by law; that the number of delegates should be the same as the number of members of Assembly under the last preceding State census, and that a majority of the Legislature may call such Convention.

"Your committee have framed a bill providing that the election of delegates shall be recommended to take place on the third Tuesday of June next; that the Convention shall assemble at Albany on the last Tuesday of August next; and that the said Convention shall submit their proceedings to the decision of the citizens, at such time and in such manner as they shall direct, - which bill the committee have directed their chairman to ask leave to introduce."

Leave being granted, Mr. Ulshoeffer forthwith introduced the bill entitled "An act recommending a Convention of the people of this State," which was read twice and committed to a commit-

tee of the whole House. The select committee were discharged from the further consideration of the bill, "to obtain the authority of the people of this State for the meeting of a Convention to revise the Constitution, and to provide for the election of delegates to such Convention, when authorized to be held," and it was ordered that the said bill be referred to the committee of the whole when on the above bill, "recommending a convention of the people of this State."

On the fourteenth (February), after amending the bill, James Burt of Orange, and James M'Kown of Albany, were added to the select committee, to which committee the bill was again referred.

On the seventeenth, Mr. Ulshoeffer introduced the bill again into the House, which was twice read and committed to a committee of the whole.

On the twenty-third, the House agreed with the committee of the whole in their report on the bill (which had been amended), and on the twenty-sixth the bill passed and was delivered to the Senate, which, on the seventh of March following, passed the same without amendment.

On the thirteenth succeeding, the Council of Revision transmitted to the Assembly its sanction of the bill, which sanction, on the fifteenth, was communicated to the Senate.

Five days later, viz., on the twentieth of March, William C. Bouck brought into the Senate a bill "To amend the act entitled 'An act recommending a Convention of the people of this State,'" which was read twice and committed to a committee of the whole.

On the twenty-eighth the bill passed the Senate and was sent for concurrence to the Assembly, which, on the succeeding third of April, passed it without amendment. On the same day it received the sanction of the Council and consequently became a law.

The question as to whether there should be a Convention was submitted to the people at the ensuing April election, and passed upon by them affirmatively. The Convention assembled at Albany on the twenty-eighth of August following, and adjourned on the tenth of the succeeding November. The result of their deliberations was the Constitution of 1821.

CHRONOLOGICAL LIST

OF

BILLS VETOED BY THE COUNCIL.

1778. February 3:	PAGE.
An act requiring all persons holding offices or places under the Government of this State to take the oaths therein prescribed and directed,	201
.... February 20 :	
An act to prevent the exportation of flour, meal and grain out of this State,	203
.... March 25:	
An act to regulate elections within this State,	208
.... March 25:	
An act for raising moneys to be applied towards the public exigencies of this State,	212
.... March 30:	
An act for raising seven hundred men to be employed in the defense of this State,	214
.... November 5:	
An act for raising a further sum by tax, to be applied towards the public exigencies of this State,	214
1779. March 14:	
An act for forfeitures and confiscations, and for declaring the sovereignty of the people of this State in respect of all property within the same,	220

1779. September 24:	PAGE.
An act for continuing the powers of the commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned,.....	226
.... October 15:	
An act to indemnify the sheriff of the county of Ulster against involuntary escapes on civil processes, and for other purposes therein mentioned,.....	227
.... October 21:	
An act to prevent horse-racing and theatrical entertainments,	228
1780. March 4:	
An act for the immediate sale of part of the forfeited estates,.....	229
.... March 8:	
An act to facilitate the levying the taxes for supporting the poor and defraying the contingent expenses in the counties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte,.....	231
.... May 12:	
An act for the more effectual suppression of vice and immorality,	232
.... October 5:	
An act for the amendment of the law directing the sales of forfeited lands,.....	233
.... October 9:	
An act for the appointment of a Council to assist in the administration of the Government during the recess of the Legislature,.....	234
1781. March 8:	
An act more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on the exportation of flour, meal and wheat out of the State,.....	235

1781. March 26: PAGE.
 An act to relieve certain persons in the county of Charlotte from the penalty of an act entitled "An act for raising levies to reinforce the armies of the United States,".... 237
- March 27:
 An act to suspend certain parts of an act entitled "An act for raising by tax a sum equal to \$150,000 in specie," and of an act entitled "An act approving of the act of Congress of the 18th day of March, 1780, relative to the finances of the United States, and making provision for redeeming the proportion of this State of the Bills of Credit to be emitted in pursuance of the said act of Congress, and for other purposes therein mentioned,"... 237
- March 29:
 An act to amend an Act entitled "An act for regulating the Militia of the State of New York,"..... 238
- March 29:
 An act to prevent evil-minded persons supplying the enemy with provisions, and for other purposes therein mentioned, 240
- June 30:
 An act for raising a tax in specie, and a tax in paper currency, 241.
1782. April 10:
 An act to empower Justices of the Peace, Mayors, Record ers and Aldermen to try causes to the value of £10 and under, and to repeal certain acts therein mentioned, 241
- April 11:
 An act for raising the sum of £18,000, and the further sum of £18,000 by tax within this State, and for settling public accounts, 243
- April 13:
 An act to stay suits against public officers for a limited time, 244

1783. March 20:	PAGE.
An act for the relief of certain insolvent debtors with respect to the imprisonment of their persons,.....	244
.... March 24:	
An act to remove certain doubts relative to the powers of the Commissioners of Sequestration,.....	245
1784. January 15:	
An act declaratory of the alienism of the persons therein described,.....	246
.... January 15:	
An act to amend an act relative to debts due to persons within the enemy's lines,	248
.... March 30:	
An act for apprehending of persons in any county upon warrants granted by the Justices of the Peace of any other county,.....	249
.... April 20:	
An act to enable the Mayor, Recorder and Aldermen of the city and county of New York, to raise moneys, by tax, for the purposes therein mentioned,.....	251
.... May 4:	
An act for raising £100,000 within the several counties therein mentioned,	252
.... May 10:	
An act to encourage the settlement of the waste and unappropriated lands within this State,.....	253
.... May 12:	
An act to preserve the freedom and independence of this State, and for other purposes therein mentioned,	254
.... May 12:	
An act for the speedy sale of the confiscated and forfeited estates within this State, and for other purposes therein mentioned,.....	256

1784. November 25 :

PAGE.

An act to empower Elizabeth Debevois, widow, and Johannes E. Lott and John Vanderbilt, Esq., administrators to the estate of Joost Debevois, deceased, to sell and dispose of the real estate of the said Joost Debevois, for the payment of his debts and other purposes, 256

.... November 27 :

An act for the more easy assessment of taxes in the city and county of New York, altering the mode of punishment in certain cases of petit larceny, and for the confinement of vagrants and lewd persons to hard labor, . . . 257

1785. March 1 :

An act to regulate inoculation for the small pox in the city and county of Albany, and in the counties of Suffolk and Dutchess, 258

.... March 3 :

An act to enable the courts therein mentioned to issue commissions for the examination of witnesses in certain cases, 259

.... March 8 :

An act incorporating the several tradesmen and mechanics of the city and county of New York, 261

.... March 9 :

An act for the indemnification of the Commissioners of Sequestration, and the Commissioners of Forfeitures, and the lessees under them, and for other purposes therein mentioned, 265

.... March 9 :

An act to prevent delay in the collection of taxes, and for giving relief in certain cases, 266.

.... March 12 :

An act to explain and amend an act entitled "An act imposing duties on certain goods, wares and merchandise imported into this State," passed 18th November, 1784, 267

1785. March 21:	PAGE.
An act for the gradual abolition of slavery within this State,	268
.... March 28:	
An act to remove doubts respecting an act entitled "An act to abolish entails; to confirm conveyances by tenants in tail; to distribute estates real of intestates; to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future," passed the 12th July, 1782,	270
.... April 4:	
An act to enable persons to discharge debts due to this State for moneys loaned while this State was a Colony, 271	
.... April 5:	
An act to appoint the place of holding the Supreme Court of Judicature of this State in future, and to prolong the terms thereof, and for other purposes therein mentioned, 272	
.... April 6:	
An act to incorporate the German Society for encouraging emigration from Germany; relieving the distresses of emigrants, and promoting useful knowledge among their countrymen,	273
.... April 11:	
An act to cure certain defects in deeds and conveyances of real estates,.....	274
.... April 20:	
An act incorporating the inhabitants residing within the limits therein mentioned,	274
.... April 20:	
An act to vest the estate of William R. Van Cortlandt in trustees for the payment of his debts, and other purposes, 275	
.... April 20:	
An act to enable the Mayor, Aldermen and Commonalty in Common Council convened, to order the raising	

	PAGE.
moneys, by tax, for the maintenance of the poor and other contingent expenses arising in the said city of New York,	276
1785. April 22:	
An act for the relief of William Gilchrist,	277
.... April 26:	
An act for the payment of the salaries of the several officers of Government, and for other purposes therein mentioned,	278
1786. February 27:	
An act for settling intestates' estates, proving wills and granting administrations,	279
1787. February 13:	
An act for settling intestates' estates, proving wills and granting administrations,	281
.... March 19:	
An act directing a mode of trial and allowing of divorces in cases of adultery,	282
.... April 11:	
An act for the more speedy recovery of debts to the value of £10,	283
.... April 21:	
An act for regulating the fees of the several officers and ministers of the Courts of Justice within this State,	285
1788. February 7:	
An act for apprehending and punishing disorderly persons,	286
.... March 20:	
An act to extend the powers of the Commissioners of the Land Office to the cases therein mentioned, and for other purposes,	288
.... March 22:	
An act for the relief of the creditors of William Van Derlocht, and for other purposes therein mentioned, ...	289

1788. March 22 :	PAGE.
An act for directing the settlement of the public accounts, and for other purposes therein mentioned,.....	289
1789. July 15 :	
An act prescribing the manner of holding elections for Senators to represent this State in the Senate of the United States,.....	290
1790. April 3 :	
An act for the relief of John Henry and others,	291.
.... April 3 :	
An act to amend an act entitled "An act to appropriate the lands set apart to the use of the troops of the line of this State, lately serving in the army of the United States, and for other purposes therein mentioned, and for extending relief to the persons therein named,"	293
1791. February 21 :	
An act to invest the Mayor, Aldermen and Commonalty of the city of New York with power to license and regu- late the fees of hackney coaches, and to lay a tax on all wheel carriages within the city and county of New York, 294	
.... March 1 :	
An act to enable the Mayor, Aldermen and Commonalty of the city of New York to order the raising moneys, by tax, for the purposes therein mentioned,	298
1792. December 1 :	
An act for electing representatives for this State in the House of Representatives of the Congress of the United States of America,	299
.... December 19 :	
An act to amend an act entitled "An act for establishing and opening lock navigations within this State,"	301
1793. February 27 :	
An act for vesting the lands appropriated for highways and streets in the city of New York, in the corporation of the said city,	303

1794. February 21:

PAGE.

An act for the relief of Mathew Trotter, 304

.... March 27:

An act further to amend the act entitled "An act for the better laying out, regulating and keeping in repair all common and public highways and private roads in the counties of Ulster, Orange, Dutchess, Westchester, Washington, Albany and Montgomery," 305

1795. March 31:

An act for the relief of certain persons claiming lands in the patents therein mentioned, 305

.... April 9:

An act for the better support of the Oneida, Onondaga and Cayuga Indians, and for other purposes therein mentioned, 308

1796. March 11:

An act to authorize the raising moneys, by tax, in the city and county of New York, for defraying the public expenses, 309

1797. February 10:

An act for raising a further sum of money for repairing the Court House and Gaol in the county of Herkimer, 309

.... March 31:

An act enabling the Mayor, Recorder, Aldermen and Commonalty of the city of Hudson, to order the raising money for the payment of a night watch, 310

.... April 1:

An act to enable St. John Honeywood to continue an attorney in certain causes, 311

.... April 3:

An act authorizing the Mayor, Aldermen and Commonalty of the city of Albany, to raise a sum of money, by tax, for defraying the expense of lighting the lamps and for the support of a night watch, 311

1798. January 2:	PAGE
An act to vest certain powers in the freeholders and inhabitants of the villages of Troy and Lansingburgh, and for other purposes therein mentioned,.....	312
.... January 2:	
An act further to amend the act entitled "An act to organize the Militia of this State,"	313
.... January 26:	
An act for the relief of Anna Breadbake,.....	314
.... February 2	
An act authorizing the use of paper instead of parchment, in certain legal proceedings,.....	315
.... March 23:	
An act repealing an act entitled "An act for granting and securing to John Fitch the sole right and advantage of making and employing the steamboat by him lately invented, and for other purposes,.....	315
.... March 30:	
An act to amend. the act entitled "An act for suppressing immorality,"	316
.... April 2:	
An act for raising money to finish and repair the Court House and Gaol in Queens county. An act to authorize the raising a sum of money for making certain necessary accommodations for the Gaol, and certain repairs for the Court House, in the county of Rensselaer. An act to raise a sum of money for building a Court House and Gaol in Delaware county, and for other purposes; and An act for building a Court House and Gaol in the county of Schoharie,	317
1799. April 2:	
An act to amend the Statute of Limitations,	317
1800. March 19:	
An act giving certain powers to the magistrates of this State, in relation to seamen in foreign service,	318

1800. April 8: PAGE.
 An act for the payment of certain officers of Government,
 and for other purposes, 319
1801. February 27:
 An act for establishing and regulating a ferry across the
 Hudson river, between the town of Mount Pleasant, in
 the county of Westchester, and Clarkstown, in the
 county of Rockland, 320
- March 30:
 An act authorizing John Marshall and Gilbert Brown to
 erect a mill-dam and grist-mills across and upon Mill
 creek, in the town of Rye, and county of Westchester,
 and to enable certain persons interested in lands contigu-
 ous thereto, to assent to the same, 320
- March 31:
 An act concerning the proof of deeds and conveyances, .. 321
- April 7:
 An act authorizing Masters in Chancery to appoint guard-
 ians for infants, 323
1802. April 3:
 An act declaring certain waters in the counties of Steuben
 and Chenango, to be public highways, and repealing
 part of the act entitled "An act to regulate highways," 324
1803. March 26:
 An act to amend an act entitled "An act concerning the
 recovery of debts and demands to the value of £10, in
 the city of New York," passed the 16th of February,
 1797, 325
- April 5:
 An act for granting and securing to Philo Norton, the sole
 right and advantage of erecting and employing, for a
 limited time, machines for carding wool and spinning flax
 and hemp, within certain counties within this State, ... 327

1804. April 4:	PAGE.
An act relative to the election of charter officers in the city of New York,	327
.... November 6:	
An act concerning libels,	328
1805. February 25:	
An act to enable the Rector, Church Wardens and Vestry- men of St. Ann's Church, of the town of Brooklyn, to sell their parsonage house and lots of ground thereto appertaining, for the purposes therein mentioned,	329
.... March 21:	
An act for the relief of Nathaniel Shaler and others,	330
.... March 30:	
An act to incorporate the trustees of the Marine Hospital, in the city of New York,	330
1806. January 28:	
An act supplementary to the act entitled "An act declar- ing the crimes punishable with death or with imprison- ment in the State Prison, and for other purposes,"	335
.... January 28:	
An act relative to dower in certain cases therein men- tioned,	333
.... January 28:	
An act authorizing Zilpha Smith to convey, by deed, the title to certain lots of land,	334
.... January 28:	
An act for the relief of Mary Reynolds, administratrix of Andrew Reynolds, deceased,	335
.... January 28:	
An act for incorporating the Newburgh Aqueduct Asso- ciation, and for other purposes,	335
.... April 2:	
An act relative to certain crimes therein mentioned,	337

1806. April 4:	PAGE
An act to amend an act entitled "An act appointing Commissioners for the inspection of turnpike roads,"	338
.... April 4:	
An act to amend an act entitled "An act to regulate highways in relation to certain towns in the county of Westchester,"	339
.... April 4:	
An act to amend an act entitled "An act for the more speedy recovery of debts to the value of \$25, and for other purposes,"	340
.... April 4:	
An act granting to John R. Hallenbake, and such other persons as with him shall associate, the privilege of laying out and constructing a free road,.....	341
1807. January 27:	
An act to amend an act entitled "An act relative to unappropriated and forfeited lands, and for other purposes,"	342
.... January 27:	
An act relative to the punishment of certain crimes,.....	343
.... April 3:	
An act relative to Columbia College, in the city of New York,	344
.... April 6:	
An act to restrain insurance of lottery tickets, and for other purposes,	345
1808. January 26:	
An act relative to certain crimes therein mentioned,	348
.... November 1:	
An act supplementary to the act entitled "An act to grant to Terence Donnelly and others, the exclusive right of running stage wagons on the west side of Hudson	

	PAGE.
river, between the city of Albany and the northern boundary line of the State of New Jersey," passed the 26th day of February, 1803,	349
1808. November 1:	
An act to enable the Directors and Company of the Canajoharie and Palatine Bridge, to rebuild the same,	350.
1809. February 24:	
An act for laying out Canal street, in the city of New York, and for amending the acts relating to streets and roads therein mentioned,	350
.... February 24:	
An act to enable the Trustees of the Reformed Dutch Church, of the township of New Utrecht, in Kings county, to sell the parcel of land therein mentioned,...	352
.... March 14:	
An act to equalize the four great districts of the State,	352
1810. January 30:	
An act to establish surveys in the city of New York, and to grant additional powers to the Mayor, Aldermen and Commonalty of the said city, in relation thereto,	355
.... January 30:	
An act for the relief of William H. Devoe,	356
.... January 30:	
An act to establish and confirm the original surveys of the lots in the Military Tract,	356
.... January 30:	
An act granting relief in certain cases to the inhabitants of the city of New York, and to the inhabitants of the town of Brooklyn, in Kings county,	357
.... January 30:	
An act for the relief of Nicholas Hardenburgh, Thomas C. Jansen and others, and for other purposes,	357

1810. March 30:	PAGE.
An act for the relief of the heirs of Thomas H. Taylor, deceased,	358
.... March 30:	
An act for the relief of Persis Pain and others,	359
.... March 30:	
An act for the relief of the heirs of Philo Day, deceased,	360
.... April 2:	
An act for the relief of the Ministers, Elders and Deacons of the Reformed Protestant Dutch Church, in the town of German Flats, in the county of Herkimer,	360
1811. March 23:	
An act for the relief of the representatives of Andrew Jones, deceased,	361
.... March 30:	
An act to prevent frauds at elections, and for other pur- poses,	362
.... April 5:	
An act to prevent frauds at elections, and for other pur- poses,	362
.... April 5:	
An act for the relief of the representatives of William H. Philips, deceased,	364
.... April 5:	
An act for the relief of James Ford,	365
1812. January 28:	
An act for the security of the estates of femmes covert, in certain cases,	366
.... March 14:	
An act relative to the real estate of George Teeple, deceased,	367

1812. May 26:	PAGE.
An act to authorize the guardians of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom and Jane Bloom, to execute a deed to James Gazley,.....	367
.... June 10:	
An act for the relief of the heirs of John Schultzs, deceased,.....	368
.... June 15:	
An act relative to the real estate of Anthony Marvin, deceased,	368
.... June 16:	
An act for the relief of Nancy Fairchild and her infant son,	369
.... June 19:	
An act incorporating trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable gospel purposes,.....	369
.... November 3:	
An act concerning the Judges of the Supreme Court,	370
1813. March 12:	
An act to amend an act entitled "An act concerning the clerks of the Supreme Court of this State, and for other purposes,"	371
.... April 5:	
An act relative to the eastern branch of the Schoharie turnpike,	372
.... April 6:	
An act concerning joint tenants and tenants in tail, regulating descents and abolishing entails,.....	373
.... April 8:	
An act restraining bigamy,.....	374
.... April 9:	
An act to revive and amend the act entitled "An act to incorporate the Harlaem Bridge Company, and for building another bridge across the Harlaem river,	375

1813. April 12:	PAGE.
An act limiting the period of bringing claims and prosecutions against forfeited estates,.....	376
1814. October 22:	
An act concerning vessels in the port of New York,	377
.... October 24:	
An act to aid in the apprehension of deserters from the army and navy of the United States,	377
1815. April 18:	
An act for the payment of certain officers of Government, and for other purposes,.....	379
1816. April 5:	
An act to incorporate the Bank of Niagara,	380
1818. January 27:	
An act for the relief of Eunice Chapman, and for other purposes,	381
.... February 27:	
An act for the relief of Eunice Chapman, and for other purposes,	382
1819. April 9:	
An act concerning the Courts of General Sessions of the Peace,	388
1820. March 7:	
An act relative to the Roman Catholic Benevolent Society, in the city of New York,.....	388
.... November 7:	
An act to authorize certain proceedings in Chancery to be done by certain county officers,	389
.... November 20:	
An act recommending a Convention of the People of this State,	390

1821. March 23:	PAGE
An act authorizing the building of a toll bridge across the Esopus creek, in the town of Saugerties, in the county of Ulster, and for other purposes,	394
.... March 31:	
An act to amend "An act to perpetuate the testimony of witnesses in certain cases," passed April 5, 1813,	395
1822. January 2:	
An act in addition to "An act relative to the common lands of the freeholders and inhabitants of," passed March 28th, 1820,	399
.... March 29:	
An act to authorize the Trustees of Farmers' Hall Acad- emy, to be Trustees of a Common School District, and for other purposes,	400
.... March 29:	
An act relative to the city of Schenectady,	401
.... March 29:	
An act for rebuilding a bridge in the town of Minisink, ..	402

CHRONOLOGICAL LIST

OF BILLS IN THE APPENDIX.

		PAGE.
1785. April 26:	An act for the payment of the salaries of the several officers of Government, and for other purposes therein mentioned,.....	405
1786. April 3:	An act for the relief of Creditors against Heirs, Devisees, Executors and Administrators, and for proving Wills respecting Real Estates,.....	408
.... April 13:	An act for emitting the sum of £200,000 for the purposes therein mentioned,.....	409
,... April 14:	An act for emitting the sum of £200,000 in Bills of Credit for the purposes therein mentioned,.....	412
.... April 15:	An act for emitting the sum of £200,000 in Bills of Credit for the purposes therein mentioned,.....	414
1790. March 5:	An act appointing Commissioners with power to declare the consent of the Legislature of this State, that a certain territory within the jurisdiction thereof should be formed or erected into a new State,.....	416
1793. January 14:	An act for prescribing the times, places and manner of holding elections for Senators to represent this State in	

	PAGE.
the Senate of the Congress of the United States of America,	418
1796. March 11:	
An act to authorize the raising moneys by tax in the city and county of New York, for defraying the public expenses,	419
1797. February 16:	
An act to render the Funds of this State more productive of Revenue,	421
1798. March 30:	
An act to amend the act entitled "An act for suppressing immorality,"	422
1799. April 2:	
An act for supplying the city of New York with pure and wholesome water,	423
1803. March 8:	
An act to increase the number of wards in the city of New York, and equalize the same,	423
1804. April 4:	
An act to restrain unincorporated Banking Associations,	425
1805. March 26:	
An act to incorporate the stockholders of the Merchants' Bank in the city of New York,	427
1806. March 28:	
An act for the relief of Henry Delord,	429
1811. March 8:	
An act to incorporate the stockholders of the Union Bank in the city of New York,	430
1812. June 2:	
An act to incorporate the stockholders of the Bank of America,	432
... June 16:	
An act providing for the election of Representatives for the State in the Congress of the United States,	433

1812. June 19:	PAGE.
An act concerning the Judges of the Supreme Court,....	436
1813. April 9:	
An act for the encouragement of American Manufactures,	438
1814. January 25:	
An act to alter the name of the corporation of Trinity	
Church in New York, and for other purposes,.....	439
.... October 21:	
An act to encourage Privateering Associations,.....	440
.... October 22:	
An act concerning vessels in the port of New York,.....	442
.... October 24:	
An act to authorize the raising of troops for the defense of	
this State,.....	443
.... October 24:	
An act to authorize the raising of a corps of Sea Fenci-	
bles,.....	445
1815. April 11:	
An act to amend an act entitled "An act for regulating	
elections;" passed March 29th, 1813,.....	447
.... April 13:	
An act apportioning the representation of this State accord-	
ing to the rule prescribed by the Constitution,.....	448
1816. November 5:	
An act to suppress dueling,	449

CHRONOLOGICAL LIST

OF BILLS THAT DID NOT BECOME LAWS FROM THE VETOES OF THE COUNCIL.

1778. November 5:	PAGE,
An act for raising a further sum by tax, to be applied to- wards the public exigencies of this State,.....	214
1779. March 14:	
An act for forfeitures and confiscations, and for declaring the sovereignty of the People of this State in respect of all property within the same,.....	219
.... September 24:	
An act for continuing the powers of the Commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned,.....	226
.... October 15:	
An act to indemnify the Sheriff of the county of Ulster against involuntary escapes on civil processes, and for other purposes therein mentioned,.....	227
.... October 21:	
An act to prevent Horse racing and Theatrical Entertain- ments,	228
1780. March 8:	
An act to facilitate the levying the taxes for supporting the poor, and defraying the contingent expenses in the coun- ties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte,.....	231

1780. May 12:	PAGE.
An act for the more effectual suppression of vice and immorality,	232
.... October 5:	
An act for the amendment of the law directing the sales of forfeited lands,	233
.... October 9:	
An act for the appointment of a Council to assist in the administration of the Government during the recess of the Legislature,	234
1781. March 29:	
An act to amend an act entitled "An act for regulating the Militia of the State of New York,"	238
.... March 29:	
An act to prevent evil-minded persons supplying the enemy with provisions, and for other purposes,	240
1782. April 13:	
An act to stay suits against public officers for a limited time,	244
1783. March 20:	
An act for the relief of certain insolvent debtors with respect to the imprisonment of their persons,	244
.... March 24:	
An act to remove certain doubts relative to the powers of the Commissioners of Sequestration,	245
1784. January 15:	
An act declaratory of the alienism of the persons therein described,	246
.... January 15:	
An act to amend an act relative to debts due to persons within the Enemy's lines,	248

1784. March 30: PAGE.
 An act for apprehending of persons in any county upon warrants granted by the Justices of the Peace of any other county,..... 249
- November 25:
 An act to empower Elizabeth Debeavois, widow, and Johannes E. Lott and John Vanderbilt, Esquire, Administrators to the estate of Joost Debeavois, deceased, to sell and dispose of the real estate of the said Joost Debeavois, for the payment of his debts and other purposes,.. 256
- November 27:
 An act for the more easy assessment of taxes in the city and county of New York, altering the mode of punishment in certain cases of Petit Larceny, and for the confinement of vagrants and lewd persons to hard labor,.. 259
1785. March 1:
 An act to regulate inoculation for the small pox in the city and county of Albany, and in the counties of Suffolk and Dutchess,..... 258
- March 3:
 An act to enable the Courts therein mentioned to issue commissions for the examination of witnesses in certain cases,..... 259
- March 8
 An act incorporating the several tradesmen and mechanics of the city and county of New York,..... 261
- March 9:
 An act to prevent delay in the collection of taxes, and for giving relief in certain cases,..... 266
- March 21:
 An act for the gradual abolition of Slavery within this State,..... 268
- March 28:
 An act to remove doubts respecting an act entitled "An act to abolish entails; to confirm conveyances by tenants

	PAGE.
in tail; to distribute estates real of intestates; to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future, passed July 12, 1782,.....	270
1785. April 6:	
An act to incorporate the German Society for encouraging emigration from Germany; relieving the distresses of emigrants, and promoting useful knowledge among their countrymen,	273
.... April 11:	
An act to cure certain defects in deeds and conveyances of real estate,.....	274
.... April 20:	
An act incorporating the inhabitants residing within the limits therein mentioned,.....	274
.... April 22:	
An act for the relief of William Gilchrist,.....	277
1786. February 27:	
An act for settling intestates' estates, proving wills and granting administrations,.....	279
1787. April 21:	
An act for regulating the fees of the several officers and ministers of the Courts of Justice within this State,...	285
1789. July 15:	
An act prescribing the manner of holding elections for Senators to represent this State in the Senate of the United States,.....	290
1790. April 3:	
An act for the relief of John Henry and others,.....	291
.... April 3:	
An act to amend an act entitled "An act to appropriate the lands set apart to the use of the troops of the line of this State, lately serving in the army of the United States,	

PAGE

and for other purposes therein mentioned, and for extending relief to the persons therein named,"..... 293

1791. February 21:

An act to invest the Mayor, Aldermen and Commonalty of the city of New York with power to license and regulate the fees of Hackney Coaches, and to lay a tax on all wheel carriages within the city and county of New York, 294

.... March 1:

An act to enable the Mayor, Aldermen and Commonalty of the city of New York to order the raising moneys by tax for the purposes therein mentioned,..... 298

1792. December 1:

An act for electing representatives for this State in the House of Representatives of the Congress of the United States of America,..... 299

1793. February 27:

An act for vesting the lands appropriated for highways and streets in the city of New York, in the corporation of the said city,..... 303

1794. February 21:

An act for the relief of Mathew Trotter,..... 304

.... March 27:

An act further to amend the act entitled "An act for the better laying out, regulating and keeping in repair all common and public highways and private roads in the counties of Ulster, Orange, Dutchess, Westchester, Washington, Albany and Montgomery,..... 305

1797. March 31:

An act enabling the Mayor, Recorder, Aldermen and Commonalty of the city of Hudson to order the raising a sum of money for the payment of a city watch,..... 310

1797. April 1:	PAGE.
An act to enable St. John Honeywood to continue an attorney in certain causes,.....	311
.... April 3:	
An act authorizing the Mayor, Aldermen and Commonalty of the city of Albany to raise a sum of money by tax for defraying the expense of lighting the lamps, and for the support of a night watch,.....	311
1798. January 2:	
An act further to amend the act entitled "An act to organize the Militia of this State,".....	313
.... January 26:	
An act for the relief of Anna Breadbake,.....	314
1799. April 2:	
An act to amend the Statute of Limitations,.....	317
1800. March 19:	
An act giving certain powers to Magistrates of this State in relation to seamen in foreign service,.....	318
1801. February 27:	
An act for establishing and regulating a ferry across the Hudson River, between the town of Mount Pleasant in the county of Westchester, and Clarkstown in the county of Rockland,.....	320
.... March 31:	
An act concerning the proof of deeds and conveyances,..	321
.... March 31:	
An act concerning mortgages,.....	323
.... April 7:	
An act authorizing Masters in Chancery to appoint guardians for infants,.....	323

1802. April 3: PAGE.
 An act declaring certain waters in the counties of Steuben
 and Chenango to be public highways, and repealing part
 of the act entitled "An act to regulate highways,".... 324
1803. March 26:
 An act to amend an act entitled "An act concerning the
 recovery of debts and demands to the value of £10 in
 the city of New York," passed February 16, 1797,.... 325
- April 5:
 An act for granting and securing to Philo Norton the sole
 right and advantage of erecting and employing for a
 limited time, machines for carding wool and spinning
 flax and hemp within certain counties within this State, 327
1804. November 6:
 An act concerning libels,..... 328
1805. March 21:
 An act for the relief of Nathaniel Shaler and others,.... 330
- March 30:
 An act to incorporate the Trustees of the Marine Hospital
 in the city of New York,..... 330
1806. January 28:
 An act supplementary to the act entitled "An act declaring
 the crimes punishable with death, or with imprisonment
 in the State Prison, and for other purposes,"..... 331
- January 28:
 An act authorizing Zilpha Smith to convey by deed the
 title to certain lots of land,..... 334
- January 28:
 An act for the relief of Mary Reynolds, administratrix of
 Andrew Reynolds, deceased,..... 335
- January 28:
 An act for incorporating the Newburgh Aqueduct Associa-
 tion, and for other purposes,..... 335

1806. April 2:	PAGE
An act relative to certain crimes therein mentioned,.....	337
.... April 4:	
An act to amend an act entitled "An act to regulate high-ways in relation to certain towns in the county of Westchester,"	339
.... April 4:	
An act to amend an act entitled "An act for the more speedy recovery of debts to the value of \$25, and for other purposes,"	340
.... April 4:	
An act granting to John R. Hallenbake, and such other persons as with him shall associate, the privileges of laying out and constructing a free road,.....	341
1807. January 27:	
An act to amend an act entitled "An act relative to unappropriated and forfeited lands, and for other purposes,"	342
.... January 27:	
An act relative to the punishment of certain crimes,.....	343
.... April 3:	
An act relative to Columbia College in the city of New York,.....	344
.... April 6:	
An act to restrain insurance of lottery tickets, and for other purposes,	345
1808. January 26:	
An act relative to certain crimes therein mentioned,.....	348
.... November 1:	
An act supplementary to the act entitled "An act to grant to Terence Donnelly and others the exclusive right of running stage wagons on the west side of Hudson River, between the city of Albany and the northern boundary line of the State of New Jersey," passed the 26th day of February, 1803,.....	349

1808. November 1:

PAGE

An act to enable the Directors and Company of the Cana-
joharie and Palatine Bridge to rebuild the same,..... 350

1809. February 24:

An act for laying out Canal street in the city of New York
and for amending the acts relating to streets and roads
therein mentioned,..... 350

.... February 24:

An act to enable the Trustees of the Reformed Dutch
Church of the township of New Utrecht, in Kings
county, to sell the parcel of land therein mentioned,... 352

.... March 14:

An act to equalize the four great districts of this State,... 352

1810. January 30:

An act to establish surveys in the city of New York, and
to grant additional powers to the Mayor, Aldermen and
Commonalty of the said city in relation thereto,..... 355

.... January 30:

An act for the relief of William H. Devoe,..... 356

.... January 30:

An act to establish and confirm the original surveys of the
lots in the Military Tract,..... 356

.... January 30:

An act granting relief in certain cases to the inhabitants
of the city of New York, and to the inhabitants of the
town of Brooklyn in Kings county,..... 357

.... January 30:

An act for the relief of Nicholas Hardenburgh, Thomas C.
Jansen and others, and for other purposes,..... 357

.... March 30:

An act for the relief of the heirs of Thomas H. Taylor,
deceased,..... 358

1810. March 30:	PAGE
An act for the relief of Persis Pain and others,.....	359
.... March 30:	
An act for the relief of the heirs of Philo Day, deceased,	360
.... April 2:	
An act for the relief of the Minister, Elders and Deacons of the Reformed Protestant Dutch Church in the town of German Flats in the county of Herkimer,.....	360
1811. March 23:	
An act for the relief of the representatives of Andrew Jones, deceased,.....	361
.... March 30:	
An act to prevent frauds at elections, and for other pur- poses,.....	362
.... April 5:	
An act to prevent frauds at elections, and for other pur- poses,.....	362
.... April 5:	
An act for the relief of the representatives of William H. Phillips, deceased,.....	364
.... April 5:	
An act for the relief of James Ford,.....	365
1812. January 28:	
An act for the security of the estates of femes covert in certain cases,.....	366
.... March 14:	
An act relative to the real estate of George Teeple, de- ceased,.....	367
.... May 26:	
An act to authorize the guardians of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom and Jane Bloom, to execute a deed to James Gazley,.....	367

1812. June 10:	PAGE
An act for the relief of the heirs of John Schultzs, deceased,.....	368
.... June 15:	
An act relative to the real estate of Anthony Marvin, deceased,.....	368
.... June 16:	
An act for the relief of Nancy Fairchild and her infant son,	369
.... June 19:	
An act incorporating Trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable Gospel purposes,.....	369
.... November 3:	
An act concerning the Judges of the Supreme Court,....	370
1813. March 12:	
An act to amend an act entitled "An act concerning the clerks of the Supreme Court of this State, and for other purposes,"	371
.... April 5	
An act relative to the eastern branch of the Schoharie turnpike,	372
.... April 6:	
An act concerning joint tenants and tenants in tail, regulating descents, and abolishing entails,.....	373
.... April 8:	
An act restraining bigamy,.....	374
.... April 9:	
An act to revive and amend the act entitled "An act to incorporate the Harlaem Bridge Company, and for building another bridge across the Harlaem river,....	375
.... April 12:	
An act limiting the period of bringing claims and prosecutions against forfeited estates,.....	376

1814. October 22 :	PAGE.
An act concerning vessels in the port of New York,.....	377
.... October 24:	
An act to aid in the apprehension of deserters from the Army and Navy of the United States,.....	377
1815. April 18:	
An act for the payment of certain officers of Government, and for other purposes,.....	379
1816. April 5:	
An act to incorporate the Bank of Niagara,.....	380
1818. January 27:	
An act for the relief of Eunice Chapman, and for other pur- poses,.....	381
1819. April 9:	
An act concerning the Courts of General Sessions of the Peace,	388
1820. March 7:	
An act relative to the Roman Catholic Benevolent Society in the city of New York,.....	388
.... November 7:	
An act to authorize certain proceedings in Chancery to be done by certain county officers,.....	389
.... November 20:	
An act recommending a Convention of the People of this State,	390
1821. March 23:	
An act. authorizing the building of a toll bridge across the Esopus Creek, in the town of Saugerties, in the county of Ulster, and for other purposes,.....	394
.... March 31:	
An act to amend "An act to perpetuate the testimony of witnesses in certain cases," passed April 5, 1813,.....	395

1822. January 2:

PAGE.

An act in addition to "An act relative to the common lands
of the freeholders and inhabitants of Harlaem," passed
March 28, 1820,..... 399

.... March 29:

An act to authorize the Trustees of Farmers' Hall Acad-
emy to be Trustees of a Common School District, and
for other purposes,..... 400

.... March 29:

An act relative to the city of Schenectady,..... 401

.... March 29:

An act for rebuilding a bridge in the town of Minisink,.. 402

CHRONOLOGICAL LIST

OF BILLS THAT BECAME LAWS NOTWITHSTANDING THE
OBJECTIONS OF THE COUNCIL, BY A TWO-THIRD
VOTE OF THE LEGISLATURE.

1778. February 3:	PAGE.
An act requiring all persons holding offices or places under the Government of this State, to take the oaths therein prescribed and directed. (This bill was amended by the Legislature in accordance with the objections of the Council, and then passed),.A.	201
.... February 20:	
An act to prevent the exportation of flour, meal and grain out of this State,	203
.... March 25:	
An act to regulate elections within this State,	208
.... March 25:	
An act for raising moneys to be applied towards the public exigencies of this State,	212
.... March 30:	
An act for raising seven hundred men to be employed in the defense of this State,	214
1780. March 4:	
An act for the immediate sale of part of the forfeited estates,	229
1781. March 8:	
An act more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on the exportations of flour, meal and wheat out of the State,	235

1781. March 26: PAGE.
 An act to relieve certain persons in the county of Charlotte
 from the penalty of an act entitled "An act for raising
 levies to reinforce the army of the United States,"..... 237
- March 27:
 An act to suspend certain parts of an act entitled "An act
 for raising by tax a sum equal to \$150,000 in specie,"
 and of an act of Congress of the 18th day of March,
 1780, relative to the finances of the United States, and
 making provision for redeeming the proportion of this
 State of the Bills of Credit to be emitted in pursuance
 of the said act of Congress, and for other purposes
 therein mentioned, 237
- June 30:
 An act for raising a tax in specie, and a tax in paper
 currency, 241
1782. April 10:
 An act to empower Justices of the Peace, Mayors, Record-
 ers and Aldermen to try causes to the value of £10
 and under, and to repeal certain acts therein men-
 tioned, 241
- April 11:
 An act for raising the sum of £18,000, and the further sum
 of £18,000 by tax within this State, and for settling
 public accounts, 241
1784. April 20:
 An act to enable the Mayor, Recorder and Aldermen of the
 city and county of New York, to raise moneys, by tax,
 for the purposes therein mentioned, 251
- May 4:
 An act for raising £100,000 within the several counties
 therein mentioned, 252
- May 10:
 An act to encourage the settlement of the waste and unap-
 propriated lands within this State, 253

1784. May 12: PAGE.
 An act to preserve the freedom and independence of this
 State, and for other purposes therein mentioned, 254
- May 12:
 An act for the speedy sale of the confiscated and forfeited
 estates within this State, and for other purposes therein
 mentioned, 256
1785. March 9:
 An act for the indemnification of the Commissioners of
 Sequestration, and the Commissioners of Forfeitures, and
 the lessees under them, and for other purposes therein
 mentioned, 265
- March 12:
 An act to explain and amend an act entitled "An act impos-
 ing duties on certain goods, wares and merchandise
 imported into this State," passed 18th November, 1784, 267
- April 4:
 An act to enable persons to discharge debts due to this
 State for moneys loaned while this State was a Colony, 271
- April 5:
 An act to appoint the place of holding the Supreme Court
 of Judicature of this State in future, and to prolong the
 terms thereof, and for other purposes therein mentioned, 272
- April 20:
 An act to vest the estate of William R. Van Cortlandt in
 trustees for the payment of his debts, and other purposes, 275
- April 20:
 An act to enable the Mayor, Aldermen and Commonalty
 in Common Council convened, to order the raising
 moneys, by tax, for the maintenance of the poor and
 other contingent expenses arising in the said city of
 New York, 276
- April 26:
 An act for the payment of the salaries of the several officers
 of Government, and for other purposes therein mentioned, 278

1787. February 13:	PAGE.
An act for settling intestates' estates, proving wills and granting administrations,	281
.... March 19:	
An act directing a mode of trial and allowing of divorces in cases of adultery,	282
.... April 11:	
An act for the more speedy recovery of debts to the value of £10,	283
1788. February 7:	
An act for apprehending and punishing disorderly persons,	286
.... March 21:	
An act to extend the powers of the Commissioners of the Land Office to the cases therein mentioned, and for other purposes,	288
.... March 22:	
An act for the relief of the creditors of William Van Derlocht, and for other purposes therein mentioned,...	289
.... March 22:	
An act for directing the settlement of the public accounts, and for other purposes therein mentioned,.....	289
1792. December 19:	
An act to amend an act entitled "An act for establishing and opening lock navigations within this State,"	301
1795. March 31:	
An act for the relief of certain persons claiming lands in the patents therein mentioned,.....	306
.... April 9:	
An act for the better support of the Oneida, Onondaga and Cayuga Indians, and for other purposes therein mentioned,.....	308
1796. March 11:	
An act to authorize the raising moneys, by tax, in the city and county of New York, for defraying the public expenses,	309

1797. February 10:

PAGE.

An act for raising a further sum of money for repairing
the Court House and Gaol in the county of Herkimer, 309

1798. January 2:

An act to vest certain powers in the freeholders and inhabi-
tants of the villages of Troy and Lansingburgh, and for
other purposes therein mentioned,..... 312

.... February 2:

An act authorizing the use of paper instead of parchment,
in certain legal proceedings,..... 315

.... March 23:

An act repealing the act entitled "An act for granting and
securing to John Fitch the sole right and advantage of
making and employing the steamboat by him lately
invented, and for other purposes,"..... 315

.... March 30:

An act to amend the act entitled "An act for suppressing
immorality," 316

.... April 2:

An act for raising money to finish and repair the Court
House and Gaol in Queens county. An act to authorize
the raising a sum of money for making certain neces-
sary accommodations for the Gaol, and certain repairs for
the Court House, in the county of Rensselaer. An act
to raise a sum of money for building a Court House and
Gaol in Delaware county, and for other purposes therein
mentioned; and An act for building a Court House and
Gaol in the county of Schoharie, 317

1800. April 8:

An act for the payment of certain officers of Government,
and for other purposes, 319

1801. March 30:

An act authorizing John Marshall and Gilbert Brown to
erect a mill-dam and grist-mills across and upon Mill

1804. April 4:
An act relative to the election of charter officers in the
city of New York, 327
1805. February 25:
An act to enable the Rector, Church Wardens and Vestry-
men of St. Ann's Church, of the town of Brooklyn, to
sell their parsonage house and lots of ground thereto
appertaining, for the purposes therein mentioned, 329
1806. April 4:
An act relative to dower in certain cases therein men-
tioned, 333
- April 4:
An act to amend an act entitled "An act appointing Com-
missioners for the inspection of turnpike roads," 338
1818. February 27:
An act for the relief of Eunice Chapman, and for other
purposes, 382

ALPHABETICAL INDEX

OF

BILLS VETOED BY THE COUNCIL.

A.

<u>ABOLITION OF SLAVERY:</u>		<u>PAGE.</u>
An act relative to the,		268
 <u>ADMINISTRATION OF GOVERNMENT:</u>		
An act relative to the,		234
 <u>ALBANY:</u>		
Night watch,		311
 <u>ALIENISM:</u>		
An act declaratory of the alienism of the persons therein de- scribed,		246
 <u>AMENDMENT OF ACTS:</u>		
233, 238, 248, 267, 293, 301, 305, 313, 316, 317, 325, 338, 339, 340, 342, 371, 375, 395		
 <u>ARMY:</u>		
An act relative to the army of the United States,		237
 <u>ASSESSMENTS:</u>		
An act more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on the exportation of flour, meal and wheat out of the State,		235

B.

BANK OF NIAGARA :	PAGE.
An act to incorporate the,	380
BIGAMY :	
An act restraining,	374
BILLS OF CREDIT :	
An act relative to,	237
BOUNTY LANDS :	
An act to amend an act entitled "An act to appropriate the lands set apart to the use of the troops of the line of this State, lately serving in the army of the United States, and for other purposes therein mentioned, and for extending relief to the persons therein named,"	293
BREADBAKE, ANNA :	
An act for the relief of,	314
BRIDGE :	
An act for rebuilding a bridge in the town of Minisink,	402
BROOKLYN :	
An act concerning relief to the inhabitants of,	357

C.

CANAJOHARIE AND PALATINE BRIDGE :	
An act to enable the Directors and Company of the Canajoharie and Palatine Bridge to rebuild the same,	350
CANAL STREET :	
An act relative to ; in the City of New York,	350
CHANCERY :	
An act to authorize certain proceedings in Chancery to be done by certain county officers,	389
CHAPMAN, EUNICE :	
An act for the relief of, and for other purposes,	381

INDEX OF BILLS VETOED BY THE COUNCIL. 525

CHARTER OFFICERS:

PAGE.

An act relative to; in the City of New York, 327

CHENANGO COUNTY:

An act relative to Waters being public highways,..... 324

CHURCHES:

An act to enable the Rector, Church Wardens and Vestrymen of St. Ann's Church, of the town of Brooklyn, to sell their parsonage house and lots of ground thereto appertaining, for the purposes therein mentioned,..... 329

An act to enable the Trustees of the Reformed Dutch Church of the township of New Utrecht, in Kings county, to sell the parcel of land therein mentioned,..... 352

An act for the relief of the Ministers, Elders and Deacons of the Reformed Protestant Dutch Church, in the town of German Flats, in the county of Herkimer, 360

CITY OF NEW YORK:

See New York City and County.

CLERKS, SUPREME COURT:

An act to amend an act entitled "An act concerning the clerks of the Supreme Court of this State, and for other purposes," 371

COLUMBIA COLLEGE:

An act relative to,..... 344

COMMISSIONERS OF LAND OFFICE:

An act to extend the powers of the Commissioners of the Land Office to the cases therein mentioned, and for other purposes, 288

COMMISSIONERS OF SEQUESTRATION:

An act to remove certain doubts relative to the powers of the Commissioners of Sequestration,..... 245

An act for the indemnification of the Commissioners of Sequestration and the Commissioners of Forfeitures, and the lessees under them, and for other purposes therein mentioned,..... 265

COMMISSIONERS OF TURNPIKE ROADS:		PAGE.
An act to amend an act entitled "An act appointing commissioners for the inspection of turnpike roads,"		338
COMMISSIONS FOR EXAMINATION OF WITNESSES:		
An act to enable the courts therein mentioned to issue commissions for the examination of witnesses in certain cases,.....		259
CONFISCATED AND FORFEITED ESTATES:		
An act for the speedy sale of the confiscated and forfeited estates within this State, and for other purposes therein mentioned,		256
CONSPIRACIES:		
An act for continuing the powers of the commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned,		226
CONVENTION:		
An act recommending a Convention of the People of this State,		390
CONVEYANCES:		
An act relative to,.....		270
COUNCIL:		
An act for the appointment of a Council to assist in the administration of the Government during the recess of the Legislature,		234
CREDITORS:		
An act for the relief of the creditors of William Van Derlocht, and for other purposes therein mentioned,.....		289
CRIMES:		
An act supplementary to the act entitled "An act declaring the crimes punishable with death or with imprisonment in the State Prison and for other purposes,"		332
An act relative to certain crimes therein mentioned,.....		337
An act relative to the punishment of certain crimes,.....		343
An act relative to certain crimes therein mentioned,.....		348

D.

DAY, PHILO, HEIRS OF:

PAGE.

An act for the relief of the heirs of Philo Day, deceased,.... 360

DEBEAVOIS, JOOST, ESTATE:

An act to empower Elizabeth Debeavois, widow, and Johannes E. Lott and John Vanderbilt, Esq., administrators to the estate of Joost Debeavois, deceased, to sell and dispose of the real estate of the said Joost Debeavois, for the payment of his debts and other purposes,..... 256

DEBTS:

An act for the more speedy recovery of debts to the value of £10, 283

An act to amend an act entitled "An act for the more speedy recovery of debts to the value of \$25, and for other purposes," 340

An act to amend an act relative to debts due to persons within the enemy's lines,..... 248

An act to enable persons to discharge debts due to this State for moneys loaned while this State was a Colony,..... 271

An act to amend an act entitled "An act concerning the recovery of debts and demands to the value of £10, in the city of New York," passed the 16th day of February, 1797,..... 325

DEEDS AND CONVEYANCES:

An act to cure certain defects in deeds and conveyances of real estate,..... 274

An act concerning the proof of deeds and conveyances,..... 321

An act to authorize the guardians of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom and Jane Bloom, to execute a deed to James Gazley, 367

DEFENSE:

An act for raising seven hundred men to be employed in the defense of this State. 214

DELAWARE COUNTY:

Act relative to Court House and Gaol in,..... 317

DESCENTS:	PAGE
An act regulating descents,	373
DESERTERS:	
An act to aid in the apprehension of deserters from the Army and Navy of the United States,	377
DEVOE, WILLIAM H.:	
An act for the relief of William H. Devoe,	356
DISORDERLY PERSONS:	
An act for apprehending and punishing disorderly persons,	286
DIVORCES:	
An act directing a mode of trial and allowing of divorces in cases of adultery,	282
DOWER:	
An act relative to Dower in certain cases therein mentioned, ..	333
DUTIES:	
An act to explain and amend an act entitled "An act imposing duties on certain goods, wares and merchandise imported into this State," passed 18th November, 1784,	267

E.

ELECTIONS:	
An act for electing representatives for this State in the House of Representatives of the Congress of the United States of America,	299
An act prescribing the manner of holding elections for Senators to represent this State in the Senate of the United States, ..	290
An act to prevent frauds at elections, and for other purposes, ..	362
An act to prevent frauds at elections, and for other purposes, ..	362
An act to regulate elections within this State,	208
EMBARGO:	
See Assessments.	

EMIGRATION:

	PAGE.
An act to incorporate the German Society for encouraging emigration from Germany; relieving the distresses of emigrants, and promoting useful knowledge among their countrymen, ..	273

ENEMY:

An act relative to supplying the,	240
---	-----

ENTAILS AND CONVEYANCES:

An act to remove doubts respecting an act entitled "An act to abolish entails; to confirm conveyances by tenants in tail; to distribute estates real of intestates; to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future," passed the 12th of July, 1782,.....	270
--	-----

ESCAPES:

An act relative to involuntary,	227
---------------------------------------	-----

EXAMINATION OF WITNESSES:

An act to enable the Courts to issue commissions, &c.,	259
--	-----

EXPORTATION OF FLOUR, &c.:

An act to prevent the exportation of flour, meal and grain out of this State,	203
---	-----

F.

FAIRCHILD, NANCY:

An act for the relief of Nancy Fairchild and her infant son,	369
--	-----

FARMERS' HALL ACADEMY:

An act to authorize the Trustees of Farmers' Hall Academy to be Trustees of a Common School District, and for other purposes,	400
---	-----

FEMES COVERT:

An act for the security of the estates of femes covert in certain cases,	366
--	-----

FERRY:

An act for establishing and regulating a ferry across the Hudson river, between the town of Mount Pleasant in the county	
--	--

	PAGE
of Westchester, and Clarkstown in the county of Rock- land,.....	320
FEES:	
An act for regulating the fees of the several officers and minis- ters of the Courts of Justice within this State,.....	285
FINANCES:	
An act relative to the finances of the United States,.....	237
FITCH, JOHN:	
An act repealing an act entitled "An act for granting and secur- ing to John Fitch the sole right and advantage of making and employing the steamboat by him lately invented, and for other purposes,"	315
FORD, JAMES:	
An act for the relief of James Ford,.....	365
FORFEITED ESTATES:	
An act for the immediate sale of part of the forfeited estates,	229
An act for the speedy sale of the confiscated and forfeited estates within this State, and for other purposes therein mentioned,	256
An act limiting the period of bringing claims and prosecutions against forfeited estates,	376
FORFEITED LANDS:	
An act for the amendment of the law directing the sales of for- feited lands,	233
FORFEITURES AND CONFISCATIONS:	
An act for forfeitures and confiscations, and for declaring the sovereignty of the people of this State in respect of all prop- erty within the same,.....	220
FREEDOM AND INDEPENDENCE OF NEW YORK:	
An act to preserve the freedom and independence of this State, and for other purposes therein mentioned,	254

INDEX OF BILLS VETOED BY THE COUNCIL. 531

FREE ROAD:

	PAGE.
An act granting to John R. Hallenbake, and such other persons as with him shall associate, the privileges of laying out and constructing a free road,.....	341

G.

GENERAL SESSIONS:

An act concerning the Courts of General Sessions of the Peace,	388
--	-----

GERMAN SOCIETY:

An act to incorporate the,	273
----------------------------------	-----

GILCHRIST, WILLIAM:

An act for the relief of,.....	277
--------------------------------	-----

GOVERNMENT:

An act relative to,.....	234
--------------------------	-----

GOSPEL PURPOSES:

An act incorporating trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable gospel purposes,	369
---	-----

H.

HACKNEY COACHES AND WHEEL CARRIAGES:

An act relative to,.....	294
--------------------------	-----

HALLENBAKE, JOHN R.:

An act granting the privileges to; to lay out and construct a free road,.....	341
---	-----

HARDENBURGH, NICHOLAS:

An act for the relief of Nicholas Hardenburgh, Thomas C. Jansen and others, and for other purposes,.....	357
--	-----

HARLAEM BRIDGE COMPANY:

An act to revive and amend the act entitled "An act to incorporate the Harlaem Bridge Company, and for building another bridge across the Harlaem river,"	375
---	-----

HARLAEM COMMON LANDS:	PAGE.
An act in addition to "An act relative to the common lands of the freeholders and inhabitants of Harlaem," passed March 28, 1820,.....	399
HENRY, JOHN:	
An act for the relief of John Henry and others,	291
HERKIMER COUNTY:	
An act relative to Court House and Gaol in,.....;....	309
HIGHWAYS:	
An act to amend an act entitled "An act to regulate highways in relation to certain towns in the county of Westchester," ..	339
An act repealing part of the act entitled "An act to regulate highways,".....;	324
HIGHWAYS AND PRIVATE ROADS:	
An act further to amend the act entitled "An act for the better laying out, regulating and keeping in repair all common and public highways and private roads in the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery,"	305
HIGHWAYS AND STREETS:	
An act relative to,.....	303
HONEYWOOD, ST. JOHN:	
An act to enable St. John Honeywood to continue an attorney in certain causes,	311
HORSE RACING:	
An act to prevent Horse Racing and Theatrical Entertainments,	228
HUDSON CITY:	
An act relative to a night watch in,	310

I.

IMMORALITY:	
An act to amend the act entitled "An act for suppressing immo- rality,"	316

INDEX OF BILLS VETOED BY THE COUNCIL. 533

IMPORTATION :	
An act relative to,.....	PAGE. 267

INCORPORATION :	
An act incorporating the several tradesmen and mechanics of the city and county of New York,.....	261
An act incorporating the inhabitants residing within the limits therein mentioned (Hudson, N. Y.),	274
An act to incorporate the trustees of the Marine Hospital, in the city of New York,	330
An act for incorporating the Newburgh Aqueduct Association, and for other purposes,.....	335
An act to incorporate the Bank of Niagara,.....	380

INDEMNITY :	
An act to indemnify the sheriff of the county of Ulster against involuntary escapes on civil processes, and for other purposes therein mentioned,.....	227
An act for the indemnification of the Commissioners of Sequestration, and the Commissioners of Forfeitures, and the lessees under them, and for other purposes therein mentioned,....	265

INDIANS :	
An act for the better support of the Oneida, Onondaga and Cayuga Indians, and for other purposes therein mentioned,..	308

INOCULATION :	
An act to regulate inoculation for the small pox in the city and county of Albany, and in the counties of Suffolk and Dutchess,.....	258

INSOLVENT DEBTORS :	
An act for the relief of certain insolvent debtors with respect to the imprisonment of their persons,	244

INSURANCE :	
An act to restrain insurance of lottery tickets, and for other purposes,	345

INTESTATES' ESTATES:	PAGE.
An act for settling intestates' estates, proving wills and granting administrations,	279
An act for settling intestates' estates, proving wills and granting administrations,	281

J.

JANSEN, THOMAS C.:	
An act for the relief of,	357
JOINT TENANTS AND TENANTS IN TAIL:	
An act concerning joint tenants and tenants in tail, regulating descents, and abolishing entails,	373
JONES, ANDREW, REPRESENTATIVES OF:	
An act for the relief of the representatives of Andrew Jones, deceased,	361
JUDGES:	
An act concerning the Judges of the Supreme Court,	370

L.

LEVIES:	
An act relative to,	237
LIBELS:	
An act relative to,	328
LOCK NAVIGATIONS:	
An act to amend an act entitled "An act for establishing and opening lock navigations within this State,"	301
LOTTERY TICKETS:	
An act to restrain insurance of lottery tickets, and for other purposes,	345

M.

MARINE HOSPITAL:	
An act relative to the, in the City of New York,	330

INDEX OF BILLS VETOED BY THE COUNCIL. 535

MARVIN, ANTHONY :

An act relative to the real estate of Anthony Marvin, deceased, 368

MASTERS IN CHANCERY :

An act authorizing Masters in Chancery to appoint guardians for infants,..... 323

MILITARY TRACT :

An act to establish and confirm the original surveys of the lots in the Military Tract,..... 356

MILITIA :

An act to amend an act entitled "An act for regulating the Militia of the State of New York,"..... 238

An act further to amend the act entitled "An act to organize the Militia of this State," 313

MILL-DAM AND GRIST-MILLS :

An act authorizing John Marshall and Gilbert Brown to erect a mill-dam and grist-mills across and upon Mill creek, in the town of Rye, and county of Westchester, and to enable certain persons interested in lands contiguous thereto, to assent to the same, 320

MINISINK :

An act for rebuilding a bridge in the town of, 402

MONEY :

An act for raising £100,000 within the several counties therein mentioned, 252

An act for raising a further sum of money for repairing the Court House and Gaol in the county of Herkimer,..... 309

An act enabling the Mayor, Recorder, Aldermen and Commonalty of the city of Hudson, to order the raising money for the payment of a night watch, 310

An act authorizing the Mayor, Aldermen and Commonalty of the city of Albany, to raise a sum of money, by tax, for defraying the expense of lighting the lamps and for the support of a night watch,..... 311

	PAGE.
An act relative to Queens, Rensselaer, Delaware and Schoharie counties,	317

MONEYS TOWARDS PUBLIC EXIGENCIES:

An act for raising moneys to be applied towards the public exigencies of this State,	212
An act for raising a further sum by tax, to be applied towards the public exigencies of this State,	214

N.

NEWBURGH AQUEDUCT ASSOCIATION:

An act for incorporating the Newburgh Aqueduct Association, and for other purposes,	335
---	-----

NEW YORK CITY AND COUNTY:

An act to enable the Mayor, Recorder and Aldermen of the city and county of New York, to raise moneys, by tax, for the purposes therein mentioned,	251
--	-----

An act for the more easy assessment of taxes in the city and county of New York, altering the mode of punishment in certain cases of petit larceny, and for the confinement of vagrants and lewd persons to hard labor,	257
---	-----

An act incorporating the several tradesmen and mechanics of the city and county of New York,	261
--	-----

An act to enable the Mayor, Aldermen and Commonalty in Common Council convened, to order the raising moneys, by tax, for the maintenance of the poor and other contingent expenses arising in said city of New York,	276
--	-----

An act to invest the Mayor, Aldermen and Commonalty of the city of New York with power to license and regulate the fees of hackney coaches, and to lay a tax on all wheel carriages within the city and county of New York,	294
---	-----

An act to enable the Mayor, Aldermen and Commonalty of the city of New York to order the raising moneys, by tax, for the purposes therein mentioned,	298
--	-----

INDEX OF BILLS VETOED BY THE COUNCIL. 537

	PAGE.
An act for vesting the lands appropriated for highways and streets in the city of New York, in the corporation of said city,	303
An act to authorize the raising moneys, by tax, in the city and county of New York, for defraying the public expenses,....	309
An act to amend an act entitled "An act concerning the recovery of debts and demands to the value of £10 in the city of New York," passed the 16th day of February, 1797,..	325
An act relative to the election of charter officers in the city of New York,.....	327
An act to incorporate the Trustees of the Marine Hospital in the city of New York,	330
An act relative to Columbia College, in the city of New York,	344
An act for laying out Canal street, in the city of New York, and for amending the acts relating to streets and roads therein mentioned,	350
An act to establish surveys in the city of New York, and to grant additional powers to the Mayor, Aldermen and Commonalty of the said city in relation thereto,.....	355
An act for granting relief in certain cases to the inhabitants of the city of New York, and to the inhabitants of the town of Brooklyn in Kings county,.....	357
An act concerning vessels in the port of New York,.....	377
An act relative to the Roman Catholic Benevolent Society in the city of New York,	388
NIAGARA:	
An act to incorporate the Bank of,.....	380
NIGHT WATCH:	
An act concerning a night watch in the City of Hudson,.....	310
An act concerning a night watch in the City of Albany,.....	311

O.

OATHS:

PAGE.

An act requiring all persons holding offices or places under the Government of this State to take the oaths therein prescribed and directed,.....	201
---	-----

P.

PAIN, PERSIS:

An act for the relief of Persis Pain and others,.....	359
---	-----

PAPER AND PARCHMENT:

An act authorizing the use of paper instead of parchment, in certain legal proceedings,.....	315
--	-----

PATENT LANDS:

An act for the relief of certain persons claiming lands in the patents therein mentioned,.....	305
--	-----

PERPETUATION OF TESTIMONY:

An act to amend "An act to perpetuate the testimony of witnesses in certain cases," passed April 5, 1813,.....	395
--	-----

PETIT LARCENY:

An act for the more easy assessment of taxes in the city and county of New York, &c.,.....	257
--	-----

PHILIPS, WILLIAM H., REPRESENTATIVES OF:

An act for the relief of the representatives of William H. Philips, deceased,.....	364
--	-----

POOR:

An act relative to the maintenance of the,.....	276
---	-----

PROUDFIT, ALEXANDER:

See Trustees.

PUBLIC ACCOUNTS:

An act for directing the settlement of the public accounts, and for other purposes therein mentioned,	289
---	-----

PUBLIC OFFICERS:

An act to stay suits against public officers for a limited time,	PAGE. 244
--	--------------

Q.

QUEENS COUNTY:

An act relative to the Court House and Gaol in,	317
---	-----

R.

RELIEF:

An act to relieve certain persons in the county of Charlotte from the penalty of an act entitled "An act for raising levies to reinforce the army of the United States,"	237
An act for the relief of certain insolvent debtors in respect to the imprisonment of their persons,	244
An act for the relief of William Gilchrist,	277
An act for the relief of the creditors of William Van Derlocht,	289
An act for the relief of John Henry and others,	291
An act for the relief of Mathew Trotter,	304
An act for the relief of certain persons claiming lands in the patents therein mentioned,	305
An act for the relief of Anna Breadbake,	314
An act for the relief of Nathaniel Shaler and others,	330
An act for the relief of Mary Reynolds, administratrix of Andrew Reynolds, deceased,	335
An act for the relief of William H. Devoe,	356
An act for the relief of Nicholas Hardenburgh, Thomas C. Jansen and others, and for other purposes,	357

RELIEF :

PAGE.

An act for granting relief in certain cases to the inhabitants of the city of New York, and to the inhabitants of the town of Brooklyn, in Kings county,..... 357

An act for the relief of the heirs of Thomas H. Taylor, deceased, 358

An act for the relief of Persis Pain and others,..... 359

An act for the relief of the heirs of Philo Day, deceased,.... 360

An act for the relief of the Minister, Elders and Deacons of the Reformed Protestant Dutch Church in the town of German Flats in the county of Herkimer, 360

An act for the relief of the representatives of Andrew Jones, deceased, 361

An act for the relief of Eunice Chapman, and for other purposes, 381

REYNOLDS, MARY :

An act for the relief of Mary Reynolds, administratrix of Andrew Reynolds, deceased, 335

ROMAN CATHOLIC BENEVOLENT SOCIETY :

An act relative to the Roman Catholic Benevolent Society, in the city of New York,..... 388

RENSSELAER COUNTY :

An act relative to the Gaol and Court House in,..... 317

S.

SALARIES :

An act for the payment of the salaries of the several officers of Government, and for other purposes therein mentioned, 278

An act for the payment of certain officers of Government, and for other purposes,..... 319

An act for the payment of certain officers of Government, and for other purposes, 379

INDEX OF BILLS VETOED BY THE COUNCIL. 541

SCHENECTADY :	PAGE.
An act relative to the city of Schenectady,.....	401
SCHOHARIE COUNTY :	
An act concerning Court House and Gaol in,.....	317
SCHOHARIE TURNPIKE :	
An act relative to the eastern branch of the,.....	372
SCHULTZS, JOHN, HEIRS OF:	
An act for the relief of the heirs of John Schultz, deceased,..	368
SEAMEN :	
An act giving certain powers to magistrates of this State, in in relation to seamen in foreign service,	318
SENATORIAL DISTRICTS :	
An act to equalize the four great districts of the State,.....	352
SETTLEMENT OF LANDS :	
An act relative to the,.....	253
SHALER, NATHANIEL :	
An act for the relief of Nathaniel Shaler and others,.....	330
SLAVERY :	
An act for the gradual abolition of slavery within this State,..	268
SMITH, ZILPHA :	
An act authorizing Zilpha Smith to convey, by deed, the title to certain lots of land,	334
SOVEREIGNTY :	
An act for forfeitures and confiscations, and for declaring the sovereignty of the people of this State in respect of all pro- perty within the same,	220
STAGE WAGONS :	
An act supplementary to the act entitled "An act to grant to Terence Donnelly and others the exclusive right of running stage wagons on the west side of Hudson River, between the city of Albany and the northern boundary line of the State of New Jersey," passed the 26th day of February, 1803,..	349

STATUTE OF LIMITATIONS:

PAGE.

An act to amend the,..... 317

STEBEN COUNTY:

An act declaring the waters of Steuben county to be public highways, 324

SUPPLYING THE ENEMY:

An act to prevent evil-minded persons supplying the enemy with provisions, and for other purposes therein mentioned, 240

SUPREME COURT:

An act to appoint a place of holding the Supreme Court of Judicature of this State in future, and to prolong the terms thereof, and for other purposes therein mentioned,..... 272

An act concerning the Judges of the Supreme Court,..... 370

An act to amend an act entitled "An act concerning the clerks of the Supreme Court of this State, and for other purposes," 371

SURVEYS:

An act to establish surveys in the city of New York, &c.,.... 355

An act to establish and confirm the original surveys of the lots in the Military Tract, 356

SUSPENSION:

An act to suspend certain parts of an act entitled "An act for raising by tax a sum equal to \$150,000 in specie," and of an act entitled "An act approving of the act of Congress of the 18th day of March, 1780, relative to the finances of the United States, and making provision for redeeming the proportion of this State of the Bills of Credit to be emitted in pursuance of the said act of Congress, and for other purposes therein mentioned," 237

T.

TAX:

An act for raising a further sum by tax, to be applied towards the public exigencies of this State, 214

INDEX OF BILLS VETOED BY THE COUNCIL. 543

	PAGE
An act for raising a tax in specie, and a tax in paper currency,	241
An act for raising the sum of £18,000, and the further sum of £18,000 by tax within this State, and for settling public accounts,	243
An act to enable the Mayor, Recorder and Aldermen of the City and County of New York, to raise moneys by tax for the purposes therein mentioned,	251
An act for raising £100,000 within the several counties therein mentioned,	252
An act to prevent delay in the collection of taxes, and for giving relief in certain cases,	266
An act to enable the Mayor, Aldermen and Commonalty in Common Council convened, to order the raising moneys by tax for the maintenance of the poor and other contingent expenses arising in the said city of New York,	276
An act to enable the Mayor, Aldermen and Commonalty of the city of New York to order the raising moneys by tax for the purposes therein mentioned,	298
An act to authorize the raising moneys by tax in the City and County of New York, for defraying the public expenses, ...	309
An act for raising a further sum of money for repairing the Court House and Gaol in the county of Herkimer,	309
An act enabling the Mayor, Recorder, Aldermen and Commonalty of the city of Hudson to order the raising money for the payment of a night watch,	310
An act authorizing the Mayor, Aldermen and Commonalty of the city of Albany to raise a sum of money by tax for defraying the expense of lighting the lamps, and for the support of a night watch,	311
An act to vest certain powers in the freeholders and inhabitants of the villages of Troy and Lansingburgh, and for other purposes therein mentioned,	312

TAX :

PAGE.

An act for raising money to finish and repair the Court House and Gaol in Queens county; an act to authorize the raising a sum of money for making certain necessary accommodations for the Gaol, and certain repairs for the Court House, in the county of Rensselaer; an act to raise a sum of money for building a Court House and Gaol in Delaware county, and for other purposes therein mentioned; and an act for building a Court House and Gaol in the county of Schoharie, .. 317

An act to suspend certain parts of an act entitled "An act for raising by tax a sum equal to \$150,000, in specie,"..... 237

An act to facilitate the levying the taxes for supporting the poor and defraying the contingent expenses in the counties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte, 231

An act for the more easy assessment of taxes in the City and County of New York, &c.,..... 257.

TAYLOR, THOMAS H., HEIRS OF :

An act for the relief of the heirs of Thomas H. Taylor, deceased, 358

TEEPLE, GEORGE :

An act relative to the real estate of George Teeple, deceased,.. 367

TEN POUND COURTS :

An act to empower Justices of the Peace, Mayors, Recorders and Aldermen to try causes to the value of £10 and under, and to repeal sundry acts therein mentioned,..... 241

TENANTS IN TAIL :

See Entails and Conveyances.

TEN POUND DEBTS :

See acts in relation to,..... 283, 325

TERMS, SUPREME COURT :

See acts in relation to,..... 228, 272

TOLL BRIDGE :

An act authorizing the building of a toll bridge across the Esopus Creek, in the town of Saugerties, in the county of Ulster, and for other purposes,..... 394

INDEX OF BILLS VETOED BY THE COUNCIL. 545

TRADESMEN AND MECHANICS' INCORPORATION:	PAGE.
An act relative to,	261

TROTTER, MATHEW:

An act for the relief of,	304
---------------------------------	-----

TROY AND LANSINGBURGH:

An act in relation to the villages of,	312
--	-----

TRUSTEES:

An act incorporating trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable Gospel purposes,	369
---	-----

An act to vest the estate of William R. Van Cortlandt in trustees for the payment of his debts, and other purposes,	275
---	-----

An act to incorporate the trustees of the Marine Hospital, in the City of New York,	330
---	-----

An act to enable the Trustees of the Reformed Dutch Church, of the township of New Utrecht, in Kings county, to sell the parcel of land therein mentioned,	352
--	-----

An act to authorize the Trustees of Farmers' Hall Academy to be Trustees of a Common School District, and for other purposes,	400
---	-----

TWENTY-FIVE DOLLAR DEBTS:

An act for the recovery of,	340
-----------------------------------	-----

U.

UNAPPROPRIATED AND FORFEITED LANDS:

An act to amend an act entitled "An act relative to unappropriated and forfeited lands, and for other purposes,"	342
--	-----

V.

VAGRANTS AND LEWD PERSONS:

See act for the more easy assessment of taxes in the City and County of New York, &c.,	257
69	

VAN CORTLANDT, WILLIAM R., ESTATE OF:

An act to vest the estate of William R. Van Cortlandt in trustees for the payment of his debts and other purposes,..... 275

VAN DERLOCHT, WILLIAM, CREDITORS OF:

An act for the relief of the creditors of William Van Derlocht, and for other purposes therein mentioned,..... 289

VESSELS:

An act concerning vessels in the port of New York,..... 377

VICE AND IMMORALITY:

An act for the more effectual suppression of vice and immorality, 232

W.

WARRANTS:

An act for apprehending of persons in any county upon warrants granted by the Justices of the Peace of any other county,..... 249

WASTE AND UNAPPROPRIATED LANDS:

An act to encourage the settlement of the waste and unappropriated lands within this State, 253

WATERS:

An act declaring certain waters in the counties of Steuben and Chenango to be public highways, and repealing part of the act entitled "An act to regulate highways," 324

WESTCHESTER COUNTY:

An act concerning highways of,..... 339

WHEEL CARRIAGES:

An act to lay a tax on,..... 294

WILLS AND ADMINISTRATIONS:

See acts in relation to, 279, 281

WITNESSES:

An act to enable the courts, &c., to issue commissions, &c.,... 259

An act to amend "An act to perpetuate the testimony of witnesses in certain cases," passed April 5, 1813, 395

WOOL CARDING AND SPINNING MACHINES:

An act for granting and securing to Philo Norton the sole right and advantage of erecting and employing for a limited time, machines for carding wool and spinning flax and hemp within certain counties within this State, 327

ALPHABETICAL INDEX

OF BILLS IN THE APPENDIX.

A.

AMENDMENT OF ACTS:

422, 447

AMERICA, BANK OF:

An act to incorporate the stockholders of the Bank of America, 432

AMERICAN MANUFACTURES:

An act for the encouragement of,..... 438

APPORTIONMENT:

An act apportioning the representation of this State according
to the rule prescribed by the Constitution,..... 448

B.

BANKING ASSOCIATIONS:

An act to restrain unincorporated Banking Associations,.... 425

BANKS:

An act to incorporate the Stockholders of the Merchants' Bank
in the city of New York,..... 427

An act to incorporate the Stockholders of the Union Bank in
the city of New York, 430

An act to incorporate the Stockholders of the Bank of Ame-
rica, 432

BILLS OF CREDIT:

PAGE.

An act for emitting the sum of £200,000 in Bills of Credit for the purposes therein mentioned,.....	409, 412, 414
---	---------------

C.

COMMISSIONERS:

An act appointing Commissioners with power to declare the consent of the Legislature of this State, that a certain territory within the jurisdiction thereof should be formed or erected into a new State,	416
--	-----

CREDITORS:

An act for the relief of Creditors against Heirs, Devisees, Executors and Administrators, and for proving Wills respecting Real Estates,.....	408
---	-----

D.

DELD, HENRY:

An act for the relief of,.....	429
--------------------------------	-----

DUELING:

An act to suppress dueling,	449
-----------------------------------	-----

E.

ELECTIONS:

An act to amend an act entitled "An act for regulating elections," passed March 29th, 1813	447
An act concerning the elections of United States Senators,....	418
An act concerning the election of Representatives in Congress,	433

I.

IMMORALITY

An act to amend the act entitled "An act for suppressing immorality,"	422
---	-----

INCORPORATIONS:

	PAGE.
An act to incorporate the Stockholders of the Merchants' Bank in the city of New York,.....	427
An act to incorporate the Stockholders of the Union Bank in the city of New York,	430
An act to incorporate the Stockholders of the Bank of Ame- rica,	432

J.

JUDGES:

An act concerning the Judges of the Supreme Court,.....	436
---	-----

M.

MERCHANTS' BANK:

An act to incorporate the Stockholders of the Merchants' Bank in the city of New York,.....	427
--	-----

N.

NEW YORK CITY:

An act to authorize the raising moneys by tax in the city and county of New York, for defraying the public expenses,....	419
An act for supplying the city of New York with pure and wholesome water,	423
An act to increase the number of wards in the city of New York and equalize the same,	423
An act to incorporate the Stockholders of the Merchants' Bank in the city of New York,	427
An act to incorporate the Stockholders of the Union Bank in the City of New York,	430
An act to incorporate the Stockholders of the Bank of Ame- rica,	432

NEW YORK CITY:

PAGE.

An act to alter the name of the corporation of Trinity Church
in New York, and for other purposes,..... 439

An act concerning vessels in the port of New York,..... 442

P.

PRIVATEERING:

An act to encourage Privateering Associations,..... 440

R.

REPRESENTATIVES, CONGRESS:

An act providing for the election of Representatives for the
State in the Congress of the United States,..... 433

RELIEF:

An act for the relief of creditors against heirs, devisees, execu-
tors and administrators, &c.,..... 408

An act for the relief of Henry Delord,..... 429

S.

SALARIES:

An act for the payment of the salaries of the several officers
of Government, and for other purposes therein mentioned, 405

SEA FENCIBLES:

An act to authorize the raising of a corps of Sea Fencibles,.. 445

SENATORS, CONGRESS:

An act for prescribing the times, places and manner of holding
elections for Senators to represent this State in the Senate of
the Congress of the United States of America,..... 418

STATE FUNDS:

An act to render the Funds of this State more productive of
Revenue, 421

SUPREME COURT:

PAGE.

An act concerning the Judges of the Supreme Court,..... 436

T.

TAX:

An act to authorize the raising moneys by tax in the city and
county of New York for defraying the public expenses,..... 419

TRINITY CHURCH:

An act to alter the name of the corporation of Trinity Church
in New York, and for other purposes,..... 439

TROOPS:

An act to authorize the raising of troops for the defense of this
State,..... 443

U.

UNION BANK:

An act to incorporate the Stockholders of the Union Bank in
the city of New York,..... 430

V.

VERMONT:

An act concerning the erection of the district of Vermont into
a new State,..... 416

VESSELS:

An act concerning vessels in the port of New York,..... 442

W.

WATER:

An act for supplying the city of New York with pure and
wholesome water,..... 423

WILLS:

An act relative to proving Wills respecting real estates,..... 408

GENERAL INDEX.

A.

	PAGE.
Abolition of Slavery,	523
Administration of Government,	234
Admiralty Colleges in Holland,	73
Admiralty Court, History of,	72-84
Albany Night Watch,	311
Alexander (James), appointed Attorney-General,	52
Alienism,	246
Amendment of Acts, 233, 238, 248, 267, 293, 301, 305, 313, 316, 317, 325, 338, 339, 340, 342, 371, 375, 395, 422, 447	447
America, Bank of,	432
American Manufactures,	438
Appointment, Sketch of the Council of,	109, 110
Apportionment,	448
Army, U. S.,	237
Assessments,	235
Attorney-Generals (Assistant),	37, 174, 175
Attwood (William), Chief Justice of the Supreme Court, ...	31
Appointment,	50
Judge, Court of Admiralty,	74

B.

Bank of America, Charter of,	132, 133, 432
Bank of Niagara,	380
Banking Associations,	425
Banks,	427, 430, 432

	PAGE.
Barculo (Seward), appointed Circuit Judge, 2d Circuit,	66
Barker (George P.), appointed Attorney-General,	67
Bayard (Nicholas), Trial of,	38, 39
Beardsley (Samuel), appointed Chief Justice and Justice Supreme Court,	66
Circuit Judge, 5th Circuit,	67
Attorney-General,	67
Benson (Egbert), Biographical Sketch of,	181-188
First Attorney-General,	53, 60
Justice Supreme Court,	56, 60
Agency relative to Constitution of United States, . . .	183, 184
Northeastern Boundary,	185-187
Objections to Bills,	306, 316
Benson (Robert), Marshal and Provost Marshal High Court of Chancery,	77
Betts (Samuel R.), appointed Circuit Judge, 2d Circuit,	66
Bickley (May), appointed Attorney-General,	51
Bigamy,	374
Bills of Credit,	237, 409, 412, 414
Bills returned by Council with objections, number of,	7
Birdsal (John), appointed Circuit Judge, 8th Circuit,	67
Bloom (George), appointed District Attorney, Middle Dis- trict,	173
Board of Trade and Plantations, Sketch of,	31
Bounty Lands,	293
Bradford (William), Editions of Colonial Laws,	37
Bradley (Richard), appointed Attorney-General,	52
Breadbake (Anna),	314
Bridge, rebuilding in Town of Minisink,	402
Bridges (John), appointed Chief Justice and Justice Supreme Court,	50, 51
Judge of Vice-Admiralty,	75
Bronson (Greene C.), appointed Chief Justice and Justice Supreme Court,	66
Attorney-General,	67
Bronson (Isaac H.), appointed Circuit Judge, 5th Circuit, . .	67
Brooke (Chidley), Justice, suspended from office,	29
Appointed Justice Supreme Court,	50

GENERAL INDEX.

557

	PAGE.
Brooklyn, relief to inhabitants of.....	357
Broughton (Sampson), Attorney-General,.....	51
Broughton (Sampson Shelton), appointed Attorney-General,	51
Burr (Aaron), appointed Attorney-General,.....	60
Butler (B. F.), Revised Statutes,.....	69

C.

Canajoharie and Palatine Bridge,.....	350
Canal Street, City of New York,.....	350
Chambers (John), Justice Supreme Court, appointment,.....	51
Chancellor, Governors of the Province acting as,.....	16
Chancellors and Vice-Chancellors, appointment of,.....	18
Chancery,	389
Chapman (Eunice), relief of,	381
Charter Officers, City of New York,.....	327
Chenango County, Waters in, Public Highways,.....	324
Chief Justices and Justices Supreme Court, Occupation, 50,	51
Salaries,.....	29, 32, 57, 58
Tenure,	33, 58, 62
Churches,.....	329, 352, 360
Circuit and Oyer and Terminer Courts, Clerk of,.....	37, 66
Circuit Courts,	34, 35, 63, 68
Circuit Court, Clerks of,	64
Clinton (De Witt), Biographical Sketch of,.....	138-143
Clinton (George), Biographical Sketch of,.....	87-111
Elected Governor and Lieutenant-Governor,.....	54
Objections to Bills not sanctioned by Council,.....	416
Code of Procedure,	69
Confiscated and Forfeited Estates,.....	256
Colonial Council, Sketch of,	28
Colonial General Assembly, Sketch of,.....	25
Columbia College,	344
Commissioners,	416
Commissions for Examination of Witnesses,	259
Commissioners of Land Office,	288
Comissioners of Sequestration,	245, 265
Commissioners of Turnpike Roads,	338

	PAGE.
Compilations and Revisions Laws of State, 1774-1821,	58
Revised Statutes,	69
Conspiracies,	226
Constitution of 1777,	5, 9
Of 1821,	61
Of 1846,	67
Constitution of the United States, origin of,	183, 184
Controversy between New York and Massachusetts relative to their public lands,	151-156
Controversy between New York and Vermont relative to territory,	94-106
Convention,	390
Convention of Representatives of the State of New York, 17,	54
Conveyances,	270
Cornbury (Lord), ordinances,	14, 30
Cosby (Governor), sues for salary,	70
Council,	234
Council at Plymouth,	153
Council (Colonial), Sketch of,	28
Council for New England,	153
Council of Appointment, Sketch of,	109-111
Council of Peter Minuet,	8
Council of Revision, History of,	5
Council of Safety,	54
Court of the Schout, Burgomaster and Schepens,	8, 22, 73
Court for the Trial of Impeachments, Clerk of,	10, 11
Court for the Trial of Impeachments,	11
Court for the Trial of Impeachments and Correction of Errors, History of,	7-11
Court of Admiralty, History of,	72-84
Court of Appeals, Clerk of,	11
Court of Appeals, History of,	11
Court of Assize,	8, 12, 23
Court of Chancery, History of,	12-19
Court of Exchequer, Sketch of,	70
Court of Mayor and Aldermen,	8, 73
Court of Orphan Masters, established by Stuyvesant,	20
Court of Oyer and Terminer, 8, 24, 34, 35, 36, 55, 64, 65,	68

	PAGE.
Court of Oyer and Terminer, Clerks of,	66
Court of Probates,	21
Courts of Sessions under the "Duke's Laws,"	12, 23
Courts of Equity held by the Circuit Judges,	17
Courts of Justice, act to settle,	12, 23
Cowen (Esek), appointed Justice Supreme Court,	66
Circuit Judge, 4th Circuit,	67
Cozine (John), appointed Justice Supreme Court,	60
Creditors,	289, 408
Crimes,	332, 337, 343, 348
Cushman (John P.), appointed Circuit Judge, 3d Circuit,	67

D.

Day (Philo), relief of Heirs of,	360
Dayton (Mathew), appointed Circuit Judge, 8th Circuit,	67
Debeavois (Joost), Estate of,	256
Debts,	248, 271, 283, 325, 340
Deeds and Conveyances,	274, 321, 367
Defense,	214
De Lancey (James), Chief Justice and Justice Supreme Court, 50, 51	
Lieutenant-Governor,	31
De Lanoy (Peter), appointed Judge Court of Admiralty, ...	73
Delaware County, Court House and Gaol in,	317
Delord (Henry), relief of,	429
Denio (Hiram), appointed Circuit Judge, 5th Circuit,	67
De Peyster (Abraham), Chief Justice and Justice Supreme	
Court,	31, 50, 51
Descents,	373
Deserters,	377
Devoe (William H.), relief of,	356
Digests of Colonial Laws, 1691-1773,	37
Disorderly Persons,	286
District Attorneys,	175
Divorces,	282
Dower,	333
Duane (James), appointed Attorney-General,	52
Dudley (Joseph), appointed Chief Justice Supreme Court, 29, 50	

	PAGE.
Dueling, suppression of,.....	449
Duer (John), Revised Statutes,.....	69
Duer (William A.), appointed Circuit Judge, 3d Circuit,	67
Duke's Laws, Courts under the,	23, 24
Duties on certain goods, wares and merchandise imported into this State,	267

E.

Edmonds (John W.), appointed Circuit Judge, 1st Circuit,	66
Edwards (Ogden), appointed Circuit Judge, 1st Circuit,	66
Elections,.....	208, 290, 299, 362, 418, 433, 447
Elmendorph (C. E.), appointed District Attorney, Middle Dis- trict,	173
Elmendorf (Lucas), appointed District Attorney, Middle Dis- trict,	173
Emigration,	273
Emmett (Thomas Addis), appointed Attorney-General,	61
Emott (James), appointed Circuit Judge, 2d Circuit,	66
Enemy, supplying the,	240
Entails and Conveyances,.....	270
Escapes, Involuntary,.....	227
Examination of Witnesses,.....	259
Exportation of Flour, &c.,.....	203
Eyles (Sir Joseph), suit of, relative to the Oblong Patent, ...	15

F.

Fairchild (Nancy),	369
Farmers' Hall Academy,.....	400
Fees,	285
Femes Covert, security of Estates of,.....	366
Ferry,	320
Field (David Dudley), Code of Procedure,.....	69
Finances, U. S.,	237
Fitch (John),.....	315
Fletcher (Governor),.....	29, 73, 74
Ford (James), relief of,.....	365

GENERAL INDEX. 561

	PAGE.
Forfeited Estates,.....	229, 256, 376
Forfeited Lands,.....	233
Forfeitures and Confiscations,.....	220
Forts Montgomery and Clinton, stormed by the British, 90-92	
Fred (Captain John), Marshal and Sergeant-at-Mace, Court of Admiralty,	75
Freedom and Independence of New York,.....	254
Free Road,.....	341

G.

Gardner (Addison), appointed Circuit Judge, 8th Circuit,....	67
General Assembly (Colonial), Sketch of,.....	25
General Sessions,.....	388
German Society, Incorporation of,.....	273
Gilchrist (William),	277
Gospel Purposes,.....	369
Government,.....	234
Governors (Colonial), acting as Chancellors,	16
Graham (David), Code of Procedure,	69
Graham (James), appointed Attorney-General,.....	29, 51
Advocate, Court of Vice-Admiralty,	74
Graham (Lewis), appointed Judge High Court of Admiralty,	77
Gray (Hiram), appointed Circuit Judge, 6th Circuit,	67
Great Seals of the State of New York, description of,.....	120
Greenleaf (Thomas), Edition of the Laws,.....	58
Gridley (Philo), appointed Circuit Judge, 5th Circuit,	67

H.

Hackney Coaches and Wheel Carriages,	294
Hall (Willis), appointed Attorney-General,	67
Hallenbake (John R.),.....	341
Hampton (John), arrives in New York,	40
Hardenburgh (Nicholas), Thomas C. Jansen and others, re- lief of,.....	357

	PAGE.
Harlem Bridge Company,.....	375
Hardy (Governor),.....	16
Harison (Francis), appointed Judge of Admiralty,	75
Harlaem Common Lands,.....	399
Hawkins (Samuel), appointed District Attorney, Middle Dis- trict,.....	173
Hawley (Gideon), Superintendent of Common Schools,....	132
Heathcote (Caleb), Judge of Admiralty,.....	75
Henry (John), and others, relief of,.....	291
Herkimer County, Court House and Gaol in,.....	309
Highways,	324, 339
Highways and Private Roads,	305
Highways and Streets,.....	303
Hildreth (Matthias B.), appointed Attorney-General,	60
Hobart (John Sloss), Biographical Sketch of,.....	177-80
Justice Supreme Court,	53, 60
Objections to Bills sanctioned by Council, 231, 234, 253, 256, 258, 261, 267, 273, 276, 282, 293, 298	
Objections to Bills not sanctioned,.....	412
Hoffman (Josiah Ogden), appointed Attorney-General,.....	60
Hoffman (Murray), Assistant Vice-Chancellor, 1st Circuit,...	18
Honeywood (St. John),	311
Horse Racing and Theatrical Entertainments,	228
Horsmanden (Daniel), appointed Chief Justice and Justice Supreme Court,.....	50, 51
Digest of Colonial Laws,	37
Hudson City, night watch in,.....	310
Hunter (Governor),	14

I.

Immorality,	316, 422, 427, 430, 432
Importation,	267
Incorporation,	261, 274, 330, 335, 380
Indemnity,.....	227, 265
Indians (Oneida, Onondaga, Cayuga),.....	308
Inoculation,	258
Insolvent Debtors,.....	244

563

J.K.

Keeper, or Master of the Rolls,.....	19
Kempe (John Tabor), appointed Attorney-General,.....	52
Kempe (William), appointed Attorney-General,	52
Kent (James), Biographical Sketch,.....	162-164
Appointed Chancellor,.....	17
Chief Justice and Justice Supreme Court,.....	59, 60
Kent and Radcliff's Revised Laws of 1802,.....	58
Objections to Bills sanctioned by Council, 319, 328, 330, 333, 336, 338, 339, 342, 344, 345, 348, 352, 356, 358, 359, 360, 365, 372, 373, 376, 377, 379, 380, 381, 388, 389, 390, 395	
Objections to Bills not sanctioned, 423, 430, 433, 438, 440, , 442, 443, 445, 447, 449	

GENERAL INDEX.

565

	PAGE.
Livingston (William) and William Smith's Digest Colonial Laws,	37
Lock Navigations,.....	301
Lottery Tickets,.....	345
London Company,.....	153
Loomis (A.), David Dudley Field and David Graham, Code of Procedure,.....	69
Ludlow (George D.), Master of the Rolls and Superintendent of Police,.....	19
Appointed Justice Supreme Court,.....	51
Ludlow (Thomas), appointed Marshal Court of Admiralty,..	75

M.

Marcy (William L.), appointed Justice Supreme Court,.....	66
Marine Hospital in the City of New York,.....	330
Marshall (Jarvis), Marshal Court of Vice-Admiralty,	74
Marvin (Anthony),	368
Masters in Chancery,.....	323
McCoun (W. T.), appointed Vice-Chancellor,.....	18
McKemie (Francis), Trial of,.....	39 - 41
McKesson (John), appointed Register High Court of Admiralty,	77
McKissock (Thomas), appointed Justice Supreme Court,....	66
Merchants' Bank,.....	427
Milbourn (Jacob),	24
Military Tract,.....	356
Militia,	238, 313
Mill-Dam and Grist-Mills,	320
Milward (Robert), appointed Justice Supreme Court,	50
Minisink, rebuilding a bridge in the town of,	402
Mitchell (Dr. Samuel L.), relative to bill granting privileges of Steam Navigation to Robert R. Livingston,	158
Mompesson (Roger), appointed Chief Justice Supreme Court,	50
Appointed Judge Admiralty Court,	75
Monell (Robert), appointed Circuit Judge, 6th Circuit,.....	67

	PAGE.
Money,	252, 309, 310, 311, 317
Moneys towards Public Exigencies,	212, 214
Morris (Lewis), appointed Chief Justice Supreme Court,	50
Morris (Lewis), Jr., appointed Judge Admiralty Court,	75
Morris (Richard), Biographical Sketch,	165-168
Appointed Chief Justice,	55, 59
Judge Court of Vice-Admiralty,	75
Declines appointment of Judge High Court of Admiralty,	77
Objections to bills sanctioned by Council, 229, 232, 259,	
271, 272, 274, 277, 279, 281, 285	285
Objections to Bills not sanctioned,	405, 408, 414
Moseley (Daniel), appointed Circuit Judge, 7th Circuit,	67

N.

Newburgh Aqueduct Association, .	335
Negro Plot, History of proceedings,	42-49
Nelson (Samuel), appointed Chief Justice and Justice Supreme Court,	66
Circuit Judge, 6th Circuit,	67
New York Great Seals, Description,	120
New York, Description of the City in 1741,	43
New York (Colonial) Council, Sketch,	28
New York (Colonial) General Assembly, Sketch,	25
New York Provincial Congress,	16, 52, 53
New York City and County, 251, 257, 261, 276, 294, 298,	
303, 309, 325, 327, 330, 344, 350, 355, 357, 377, 388,	
419, 423, 427, 430, 432, 439, 442	442
New York Council of Safety,	54
New York, Plan of Government under Council of Safety, 17,	54
New York City, Charter Officers,	327
Nicholls (Richard), appointed Register of Vice-Admiralty Court,	75
Night Watch in the cities of Hudson and Albany,	310, 311
Niagara, Bank of,	380
Northeastern Boundary Line, History of,	185-187

O.

	PAGE.
Oakley (Thomas J.), appointed Attorney-General,	61
Oaths,	201
Oblong Patent,	15
Officers in Chancery, Number in 1752, 1823, 1846,	18
Opinions (written), origin in Supreme Court,	57
Opposition to Court of Chancery,	13 - 15

P.

Pain (Persis), and others, relief of,	359
Paper and Parchment,	315
Parker (Amasa J.), appointed Circuit Judge, 3d Circuit,	67
Patent Lands,	305
Perpetuation of Testimony,	395
Petit Larceny,	257
Philips (William H.), relief of Representatives,	364
Philipse (Adolph), Justice Supreme Court,	50
Philipse (Frederick), appointed Justice Supreme Court,	51
Pinhorne (William), appointed Justice Supreme Court, ..	29, 50
Judge of Admiralty,	74
Plan of Government under Council of Safety,	17, 54
Platt (Jonas), Biographical Sketch of,	195, 196
Appointed Justice Supreme Court,	60
Objections to Bills sanctioned by Council,	382
Poor, Maintenance of the,	276
Popham (William), appointed Clerk Court of Exchequer, ...	72
Privateering,	440
Proceedings on the Bills recommending the Convention of	
1821,	478, 479
Provincial Congress, N. Y.,	16, 52, 53
Public Accounts,	289
Public Officers, staying suits against,	244
Pratt (Benjamin), appointed Chief Justice Supreme Court, ..	50

Q.

	PAGE.
Queens County, Court House and Gaol in,.....	317
Quit Rents,.....	97

R.

Radcliff (Jacob), Biographical Sketch of,.....	189-191
Appointed Justice Supreme Court,.....	60
Objections to Bills sanctioned by Council,.....	318, 324
Rayner (John), appointed Attorney-General,.....	51
Regents of the University, Sketch of,.....	107
Relief, 237, 244, 277, 289, 291, 304, 305, 314, 330, 335, 356, 357, 358, 359, 360, 361, 381, 408, 429	
Rensselaer County, Gaol and Court House in,.....	317
Reporter, Court of Chancery,.....	17
Reporter, Supreme Court,.....	57, 63
Representatives, Congress,.....	433
Revised Laws of 1802, 1813,.....	58
Revised Statutes,.....	69
Reynolds (Mary),.....	335
Robertson (Anthony L.), Assistant Vice-Chancellor 1st Circuit,	19
Rochester (William B.), appointed Circuit Judge, 8th Circuit,	67
Roman Catholic Benevolent Society, City of New York, ...	388
Ruggles (Charles H.), appointed Circuit Judge, 2d Circuit, ..	66
Rules of Supreme Court of the State; the first drawn by Judge Benson,.....	56

S.

Salaries,.....	278, 319, 379, 405
Salaries of Chief Justice and Justices Supreme Court, 32, 29, 57, 58, 63, 69	
Salaries of Circuit Judges,.....	66
Sandford (Lewis H.), Assistant Vice-Chancellor, 1st Circuit, ..	19
Sandford (Nathan), Chancellor,	18
Savage (John), appointed Chief Justice,.....	66

GENERAL INDEX.	569
	PAGE.
Schenectady, city of,	401
Schoharie County, Court House and Gaol in,	317
Schoharie Turnpike, eastern branch of the,	372
Schultzs (John), relief of the Heirs of,	368
Scott (John Morin), elected Associate Justice Supreme Court but declined office,	53
Sea Fencibles,	445
Seals (Great) of the State of New York, description of,	120
Seals Supreme Court,	55, 56, 62
Seamen,	318
Senatorial Districts, to equalize the four great,	352
Senators, Congress,	418
Settlement of Lands,	253
Shaler (Nathaniel), and others, relief of,	330
Skinner (John B.), appointed Circuit Judge, 8th Circuit,	67
Slavery, the gradual abolition of, within this State,	268
Smith (William), appointed Chief Justice and Justice Supreme Court,	29, 50, 51
Judge Court of Vice-Admiralty,	74
Smith (William), the elder, appointed Justice Supreme Court, Attorney-General,	51 52
Smith (Zilpha),	334
Sons of Liberty, origin of phrase,	177
Sovereignty,	220
Special Pleading, what time it came in use in the Province in English Language,	34
Spencer (Ambrose), Biographical Sketch,	174-176
Appointed Chief Justice and Justice Supreme Court,	59, 60
Attorney-General,	60
Objections to Bills sanctioned by Council,	330, 332, 334, 335, 337, 343, 357, 399
Objections to Bills not sanctioned,	427, 430, 432
Spencer (John C.), B. F. Butler and John Duer, Revised Statutes,	69
Stage Wagons,	349
State Funds,	421
State Reporter,	12

	PAGE.
Statute of Limitations,	317
Steuben County, waters of public highways,	324
Street (Randall S.), appointed District Attorney Middle Dis- trict,	173
Strong (Selah B.), appointed Circuit Judge, 2d Circuit,	66
Supplying the Enemy,	240
Supreme Court,	272, 370, 371, 436
Supreme Court Bench, number composing it, ... 27, 31, 56,	61
Who composed it at commencement of Revolution,	52
Disruption,	52
Supreme Court, Clerks,	32, 55, 56, 57, 62, 63, 69, 371
Supreme Court of Judicature, History under the Colony, 22 - 52	
Under Constitution of 1777,	52 - 61
Under Constitution of 1821,	61 - 67
Under Constitution of 1846,	67 - 69
Admission to Practice in,	34, 56, 66, 69
Surrogates' Court,	20
Suspension,	237
Surveys,	355, 356
Sutherland (Jacob), appointed Justice Supreme Court,	66

T.

Talcott (Samuel A.), appointed Attorney-General,	61 - 67
Tax, 214, 231, 237, 241, 243, 251, 252, 257, 266, 276, 298, 309, 310, 311, 312, 317, 419	
Tayler (John), Biographical Sketch of,	147, 148
Taylor (Thomas H.), relief of Heirs,	358
Teeple (George), deceased, real estate of,	367
Ten Pound Courts,	241
Terms of Supreme Court,	28, 30, 54, 55, 57, 61, 68
First term held under the Constitution of State,	55
Thompson (Smith), Biographical Sketch,	173, 174
Appointed Chief Justice and Justice Supreme Court, ..	59, 60
Objections to Bills sanctioned by Council, ..	340, 341, 356, 372
Throop (Enos T.), appointed Circuit Judge, 7th Circuit,	67
Toll Bridge,	394

GENERAL INDEX.

571

	PAGE.
Tompkins (Daniel D.), Biographical Sketch,	130-137
Appointed Justice Supreme Court,	60
Objections to Bills sanctioned by Council,	375
Tracy (Albert H.), appointed Circuit Judge, 8th Circuit, . . .	67
Tradesmen and Mechanics' Incorporation,	261
Trials by Jury established in the Courts under Act of 1691, . .	27
Trinity Church,	439
Troops,	443
Trotter (Mathew), relief of,	304
Troy and Lansingburgh,	312
Trustees,	275, 330, 352, 369, 400
Tudor (John), appointed Register Court of Vice-Admiralty, . .	74
Twenty-Five Dollar Debts,	340

U.

Ulshoeffer (Michael), Report to the Assembly relative to the objections of the Council of Revision to the Act recom- mending a Convention,	455-476
Second Report,	476-478
Unappropriated and Forfeited Lands,	342
Union Bank, City of New York,	430

V.

Vagrants and Lewd Persons,	257
Van Buren (John), appointed Attorney-General,	67
Van Buren (Martin), appointed Attorney-General,	61
Van Cortlandt (Pierre), chosen Lieutenant-Governor,	54
Van Cortlandt (Stephen), appointed Chief Justice and Justice Supreme Court,	29, 50, 51
Van Cortlandt (William R.), Estate of,	275
Van Dam (Rip), proceedings in Court of Exchequer relative to, and Governor Cosby,	70
Van Der Donck (Adriaen), Remonstrance,	22
Van Derlocht (William), Creditors of,	289
Vanderpoel (James), appointed Circuit Judge, 3d Circuit, . .	67
Van Ness (William P.), and John Woodworth, Revised Laws of 1813,	58

	PAGE.
Van Ness (William W.), Biographical Sketch of,.....	194
And John Woodworth's Revised Laws of 1813,.....	58
Appointed Justice Supreme Court,.....	60
Objections to Bills sanctioned by Council,.....	362, 365
Van Schaack (Peter), Digest Laws of the Province,.....	37
Van Vechten (Abraham), appointed Attorney-General,.....	60
Varick (Richard), appointed Attorney-General,.....	60
Vermont Controversy, History of,.....	94-106
Vermont, erection into a new State,.....	416
Vessels in the Port of New York,.....	377, 442
Vice and Immorality, the more effectual suppression of,....	232
Vice-Chancellorships of 1st and 8th Circuits,.....	18, 19
Assistant Vice-Chancellorship, 1st Circuit,.....	18
Virginia (1st Colony),	153
Virginia (2d Colony),.....	153

W.

Walters (Robert), appointed Justice Supreme Court,....	31, 50
Walworth (Reuben H.), appointed Chancellor,.....	18
Circuit Judge, 4th Circuit,.....	67
Warrants,	249
Waste and Unappropriated Lands,.....	253
Water, supplying City of New York,.....	423
Waters,.....	324
Webster and Skinner's Edition of the Laws,.....	58
Wenham (Thomas), appointed Justice Supreme Court,.....	50
Westchester County, highways of,.....	339
Wheel Carriages, a tax on,.....	294
Whiting (Bowen), appointed Circuit Judge, 7th Circuit,....	67
Whittlesey (Frederick) appointed Vice-Chancellor, 8th Cir- cuit,	19
Justice Supreme Court,.....	66
Willard (John), appointed Circuit Judge, 4th Circuit,.....	67
Williams (Nathan), appointed Circuit Judge, 5th Circuit,....	67
Wills and Administrations,.....	279, 281, 395, 408
Witnesses,	259

GENERAL INDEX.

573

	PAGE.
Woodworth (John), Biographical Sketch of,	196-198
Appointed Justice Supreme Court,	60, 66
Attorney-General,	60
Objections to Bills sanctioned by Council,	394
Wool Carding and Spinning Machines,	327

Y.

Yates (Joseph C.), Biographical Sketch of,	144-146
Appointed Justice Supreme Court,	60
Objections to Bills sanctioned by Council,	350
Yates (Robert), Biographical Sketch of,	168-172
Appointed Chief Justice and Justice Supreme Court, ..	59, 60
Objections to Bills sanctioned by Council,	291, 311

Z.

Zenger (John Peter), Trial of,	71
--------------------------------------	----

ERRATA.

Page 19, 2d paragraph, for "Lewis H. Sanford succeeded Murray Hoffman as Vice-Chancellor," read: Lewis H. Sandford succeeded Murray Hoffman as Assistant Vice-Chancellor.

Page 52, 1st line, for "William Smith," read: William Smith the elder; and in note 3, for "1751," read 1752.

